UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	.	Case No. 01-01139 JKF
	.	
W. R. GRACE & CO.,	.	
et al.,	.	USX Tower - 54th Floor
	.	600 Grant Street
	.	Pittsburgh, PA 15219
Debtors.	.	
	.	June 26, 2007
. . . . .		8:54 a.m.

TRANSCRIPT OF HEARING
BEFORE HONORABLE JUDITH K. FITZGERALD
UNITED STATES BANKRUPTCY COURT JUDGE

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I N D E X

		PAGE	
EXHIBITS		**ID.**	**EVD.**
Exhibit 11	Interrogatories	100	

THE COURT: This is the matter of W.R. Grace, Bankruptcy Number 01-01139. The participants I have listed by phone are Francis Monaco, Timothy Cairns, Christina Kang, Brian Macargie (phonetic), Shane Spencer, Martin Dies, Terence Edwards, Andrew Hain, Renee Smith, Corin (phonetic) Ewing, John Greene, Debra Felder, Roger Frankel, Richard Wyron, Jonathan Brownstein, Jason Solganick, Sander Esserman, Van Hooker, David Klinger, David Parsons, Andrew Chan, John Mackin, John Demy, Kathy Bern (phonetic), Steven Blonner (phonetic), Christopher Candon, Daniel Candra (phonetic), Amanda Basta, Marti Murray, Carl Pernicone (phonetic), John Herrick, David Beane, Natalie Ramsey, Leonard Busby, John Phillips, Catherine Meyer, Tiffany Cobb, Matthew Kramer, Arlene Krieger, Beau Harbour, John Wollen, Andrew Craig, Michael Lastowski, Matt Doheney (phonetic), Robert Horkovich, Walter Slocombe, Noel Burnham, Sam Blatnick, Alex Mueller, David Liedman (phonetic), Jacob Pone (phonetic), Daniel Hogan, Peter Shawn, Jarrad Wright, David Hickerson and Theodore Tacconelli. I'll take entries in court, please.

(Mr. Bernick is not near a microphone)

MR. BERNICK: Good morning, Your Honor. David Bernick for Grace.

MS. BASTA: Amanda Basta for W.R. Grace.

MS. BAER: Janet Baer for W.R. Grace.

MR. BLATNICK: Sam Blatnick for W.R. Grace.

MR. PASQUALE: Good morning, Your Honor. Ken Pasquale for the Unsecured Creditors Committee.

MR. BENTLEY: Phillip Bentley for the Equity Committee.

THE COURT: Excuse me one second. Okay. Thank you.

MR. FINCH: Good morning, Your Honor. Nathan Finch for the Asbestos Claimants Committee.

MR. MULLADY: Good morning, Your Honor. Raymond Mullady for the Future Claimants Representative.

MR. ANSBRO: Good morning, Your Honor. John Asnbro, also fro the FCR.

MS. RAMSEY: Good morning, Your Honor. Natalie Ramsey for the Certain Grace Cancer Claimants and the MMWR Firms.

MR. ESSERMAN: Your Honor, Sander Esserman and Van Hooker's with me for various firms.

MR. HURFORD: And Mark Hurford for the ACC.

THE COURT: Okay. I think there are really issues today concerning the statute of limitations for the City of Philadelphia claim, the Canadian statute of limitations motion. We still need to address that and the property damage argument, plus the issue concerning the scheduling order. No?

MR. BERNICK: Well, I think that the scheduling order -- the personal injury case management order was on for today. The other principal item of business was the motion for

protective orders on the discovery with respect to the law firms.

THE COURT: Well, then, I've got this proceeding memo in the wrong place here.

MR. BERNICK: The PD items that were originally, I think, set for today, perhaps were moved back to yesterday or did you know -- you know, probably.

MS. BAER: That's correct. There are no PD items up today. The only PD items that were to be addressed were addressed yesterday. And then the next PD date is at the end of July.

THE COURT: Okay. I wondered why we have more about the Canadian Claims and with the people who are on the phone, but okay.

MS. BAER: No.

THE COURT: I thought maybe I missed something yesterday. Okay. Mr. Finch?

MR. BERNICK: And I think that we have the -- pursuant to the arrangements yesterday, we have, I think it's a total of 40 minutes for the movants and their supporters, cheerleaders and other people who are going to speak in their favor and that we have a half an hour and I think I'll -- I know I'll want to reserve five minutes of my time for potential surrebuttal.

THE COURT: Okay. Mr. Finch?

MR. FINCH: Nathan Finch for the ACC. May it please the Court. We -- first of all, the debtor leaves the suggestion in its papers that we did not attempt to meet and confer about this issue. Mr. Bernick and Mr. Lockwood and I had a very brief conversation on May the 21st about this issue. I anticipated that there'd be some kind of proposal from the debtor. That was my fault. I misconstrued what Mr. Bernick told me. But, I was expecting some kind of proposal.

As soon as we knew that other firms were reaching out to the debtor, the ACC and the FCR sent out a very specific proposal to try to resolve this to the debtor and the debtor did not respond to that except through its papers.

To sort of frame this issue, I'm going to step back and talk about discovery to claimants, generally. The Court has said, and I'm quoting from the November 14th, 2005 hearing transcript at Page 140. The reason the Court permitted the questionnaires was to try to get what the debtor said the debtor needed for its experts to evaluate in terms of the current mass of claims, and it was only ever supposed to be a sample.

The Court has also said in a later hearing in this case that this process, and we're talking about claimant directed discovery, is to help anybody's expert get the information that they need to try to convince me of what the existing and future asbestos personal injury claims will be,

and how much it's going to cost to resolve them.

Since the time that the parties filed their motion for a protective order on June the 4th and Grace responded on June the 15th, we have now received Grace's estimation expert reports. We have the report from Tom Florence. And it's true that he really does only rely on a review of 3,217 questionnaires and their attachments, and 2,800 cases that Grace had settled pre-petition and whatever documents Grace had in its files that were provided pursuant to the settlement agreement.

And from that, after a review of those documents by the Delaware Claims Facility, he extrapolates the information there across the entire universe of present and future personal injury claimants. There's nothing in Dr. Florence's report that says that its' incomplete. That it needs anymore discovery. That it needs anymore information from claimants or anybody else to estimate the liability. He signed the report. He put a range of liability on there. And although he is relying on assumptions Grace gave him, he never said he needs anymore discovery.

Now, in his papers that were filed on June the 15th in response to my and other party's motion, Grace proposes these deposition notices cover the following topics. And this is found at Page 2 and 3 of the pleading that Grace filed called Debtors Combined Response to the Motions for Protective

Order. I don't know specifically what the docket number for this document is, but the basic discovery -- they said what they need is on Page 2 and 3 which is, the processes used by the law firms to provide information regarding B reads performed for each claimant. Processes used by the law firm to provide the information responsive to Parts 3 and 4 of the questionnaire about direct and indirect Grace exposure, and the processes used by the law firm to provide information responsive to Part 5 of the personal injury questionnaire exposure in non-Grace products.

Later in the same paper, they make the point that they need to know this information to establish that there might be some additional evidence out there, and that they don't have the whole universe of data.

Well, we know they don't have the whole universe of data because the questionnaire doesn't ask for it among other things. For example, the questionnaire doesn't ask who's your testifying expert for trial. People don't know that. They haven't had the ability to try cases against Grace for six years. It doesn't ask, for example, who are all the fact witnesses you would use to try your case against W. R. Grace.

But, they say they need this information. The position of the ACC and the FCR -- we want to get to the expert discovery. We're not trying to foreclose this discovery they say they need entirely. I think it's completely irrelevant at

this point. We've got the expert reports, let's go to it.

But, what we object to when you boil our papers down to its essence, is the method of getting this information. We object to the depositions as a way to do it for three reasons, basically. First of all, Grace has already taken some 15 depositions -- fact witness depositions -- which exceeds the number permitted by the federal rules.

The federal rules of civil procedure are a, you know, a compromise to basically force parties to focus on what's important. I've handled billion dollar cases where the Court said -- restricted me to the ten deposition limit per side. And so, I think that, you know, going out and taking depositions of 21 or six law firms exceeds an amount permitting the rules.

Second, it's an expensive and cumbersome way to get at this information and, you know, we require lots of lawyers to show up at the deposition from all of the constituencies represented in the case. And third, and this is what really Mr. Mullady and I are concerned about.

We are on a very tight schedule, and we don't want to be in a position where any time Grace thinks it wants to go take a deposition of some fragments it'll just go and do it. The -- you know, theoretically, Grace could start noticing up depositions of co-defendants, claimants. They could take a deposition decision every day from here through the end of the

discovery period. And if they want to play that game, we can do it, too. We can start noticing depositions of co-defendants and Grace's defense counsel. But, that's not what this is about.

This is about expert estimates of Grace's liability. And I think the experts have what they need to do their job. You've got our expert reports. You'll get Grace's, presumably today.

So, I don't think these depositions are the right way to get this information that Grace says it needs. And although I dispute whether it really needs it, I think that there is a better way to do it. And I think the same basic information that they're describing on Page 2 and 3 of their papers can be elicited in responses to properly tailor interrogatories that I believe that you'll hear from Mr. Esserman and Mr. -- excuse me -- Mr. Esserman and Ms. Ramsey.

The firms will describe how they would respond to those, provided there is some order from the Court that the responses do not constitute a waiver of the attorney/client privilege of the work product doctrine. That's what I think a lot of the resistence relates to.

And so, with that, Your Honor, that's my -- on behalf of the ACC, my position on this. I don't think any depositions should go forward. I think the information can be obtained in other ways. And I will turn the podium over to my counsel --

able counsel, Mr. Esserman, Ms. Ramsey, after eight minutes of argument time. Thank you.

THE COURT: All right. Ms. Ramsey?

MS. RAMSEY: Good morning, Your Honor.

THE COURT: Good morning.

MS. RAMSEY: Natalie Ramsey. Today I am here representing five law firms; the law firms of Kazan McClain, Waters & Kraus, Paul Hanley & Harley, the Wortnick (phonetic) firm and Early, Ludwick & Sweeney, each of which were served with a notice of deposition by Grace.

Your Honor, there are three major reasons -- there are a number of reasons identified in our papers, but really three major reasons that we oppose the discovery. The first, as indicated by Mr. Finch, is that the experts have not said that they need this for any purpose. And we, frankly, don't understand why Grace would need this information in connection with estimation hearings.

The second is the method of obtaining the information. It is extremely burdensome and oppressive and expensive to take the video tape depositions of lawyers from the plaintiff's law firms. And the most significant is the third reasons, which is that the manner in which the discovery -- at least the written discovery -- has been asked, implicates the attorney/client and work product privileges. And the concern is that a deposition will necessarily get to

those same types of concerns.

For example, in the debtor's response to the 21 motions, the debtor identifies three topics that it would like to cover in the depositions. Those three topics all involve the processes used by the law firms to identify and respond to various types of questions.

Any time a question is asked concerning the processes of a law firm, the law firms -- or product privileges necessarily implicated. If we could obtain a ruling by the Court that to the extent that the firms were prepared to provide responses to a limited number of questions which I'll identify in a moment, that that would not violate -- that any response would not waive the work product or attorney/client privilege.

The firms are generally prepared, and I say generally because our proposal would be that any firm that was willing to do this and would do it within the time frame that I'm about to provide, would request that the Court enter an order ordering that the depositions of those firms not be had at least with respect to the current topics identified.

What we would propose, Your Honor, is that the debtor has served a -- in its second set of interrogatories, four questions. One of the questions asks, "What steps were taken by the law firm to find any and all responsive documents or information in the possession or control of other law firms or

doctors?" That's a paraphrase. But, that question is one that we would propose could be provided in written form in lieu of deposition testimony.

Interrogatory 4 of the second set asks the question, "In asserting the consulting expert privilege with respect to any documents withheld on that basis, describe what steps, if any, were taken to identify and obtain the first B read performed for each claimant for whom you filed a response." That question we would propose if we could obtain the type of ruling that I've indicated to respond to.

Going back to the debtor's response, it identifies two additional areas of inquiry. One is the processes that were used to answer Parts 3 and 4 of the personal injury questionnaire concerning direct and indirect exposure to Grace asbestos containing products.

The law firms would be prepared to, or at least a certain number of them, to respond to that question in a general fashion because they may have done different things for different claimants. But, they are prepared provided that it would not waive any privileges to respond to the question of what they generally did in responding to the questionnaires to answer Parts 3 and 4 of the personal injury questionnaire. And similarly, what processes were generally used to answer Part 5 of the personal injury questionnaire concerning exposure to non-Grace asbestos containing products.

The firms that would be prepared to do this, Your Honor, would be prepared to do it so that the responses would be served by two weeks from this Friday. So, on an expedited basis. And to the best of our understanding, having read through Grace's response, and having read through the interrogatories, that is the -- those are the questions and the information that Grace has sought.

We still take the position and our -- of the view that this discovery is not necessary for the estimation hearing. However, it certainly is the case that the depositions of counsel are going to be difficult. Are going to be expensive, and are going to necessarily lead to additional discovery issues. They're going to have to be litigated before this Court, and they are going to waste the estate's assets and this Court's time on matters that can be responded to by written discovery.

Your Honor, just to cover a couple of the additional points raised in our papers in opposing the deposition discovery. We believe that some of the information -- or for some of the claimants, the information requested is unnecessary and deplicative. For example, for the mesothelioma claimants, where there is a pathology and the Court has already addressed for purposes of the questionnaire, the lack of necessity to identify other exposure information. And with respect to the lung cancer claimants, x-rays have already been provided to the

debtor's expert so that they can review those x-rays. And the issue of -- and in many cases, a number of B reads. And the issue of what other medical information could be obtained in the fullness of time if these cases were to be worked up to trial is simply not appropriate as part of the estimation exercise.

Finally, Your Honor, we did object to the procedurally defective manner in which the notices were served. But, as I've indicated, we would be prepared to proceed irregardless of that, and without waiver and subject to the other objections we raised, but again, with the Court's order that responses to the four discovery questions that I've identified would not waive any of the privileges of the firms. Thank you.

THE COURT: All right. Thank you. Mr. Esserman?

MR. ESSERMAN: Sandy Esserman for the various law firms we've filed on behalf of, Your Honor. I'm not going to repeat anything in my papers. I know Your Honor, and I know Your Honor's read all the papers.

I think what Ms. Ramsey just discussed was an alternative to depositions which I first heard about very recently, and I'm still digesting it and running it by our clients. But, the bottom line is, I think that's something that should work.

I think this whole process is unnecessary. I concur

with Ms. Ramsey's remark and Mr. Finch's remark, but -- remarks on that -- but if this information that Grace feels is needed, it can be elicited in a non-contentious, non-objectionable format that preserves the work product privileges, attorney/client privileges.

Maybe I'm getting old, but I just want to get this done with. I want to get this over. This has gone on way too long. We're talking about years now on these issues. I think we're sort of seeing the end of the light of the tunnel on these particular issues with the firms. And Ms. Ramsey's alternative, I think, is both creative and a good one.

Otherwise, I fear that either the depositions are going to get quashed and that's going to raise issues or the depositions are going to go forward and that's going to raise issues. And it's just going to be a mess. And the interrogatory responses, I think, are a good way of doing it, and I think it's something, actually, that the Court might've even suggested some time ago. And I think it's a good thing. And it can be done quickly and directly and we can get it done.

Taking a deposition of one's adversary, especially in a case that's not P v. D. This is an estimation proceeding which we -- I know Your Honor never forgets that, but I wonder sometimes if we all, on both sides of the table, sort of forget that occasionally.

But, taking a deposition of a lawyer in a case is

very difficult and problematic. And frankly, is a very rare event. And we've cited in our papers why we think legally it's impermissible. I have seen it once in third party discovery, not in a bankruptcy context, and it wound up being so contentious that the judge finally decided to have the deposition in his courtroom. I think it was necessary because there was also two issues on privileges, waivers, who was contending, what was waived and when it was waived and how it was waived and what was said. Answers being read back. It was a mess.

So, I think my clients will be reluctant to answer the interrogatories, but I think that is the clear path. And it's a path that I can endorse. And I talked to one of my clients here today who has been noticed for the deposition and they're fine with that approach. Thank you, Your Honor.

MR. NATHAN: Your Honor, we'd just like to reserve the remainder of our 20 minutes for rebuttal or response.

THE COURT: All right. Anyone on the phone have a position that you want to express before I turn to the debtor? Okay. Mr. Bernick? I like this, limiting this argument. This worked very well so far, you know.

(Laughter)

THE COURT: I should've done this a long time ago.

MR. BERNICK: Now, first can I inquire if there's anybody representing Kelly and Ferraro in the courtroom or on

the telephone?

MR. WILSON: I'm Wilson, Kelly and Ferraro.

MR. BERNICK: Okay. And I didn't hear anybody representing Motley Rice. Is there anybody representing Motley Rice?

THE COURT: Is anyone representing Motley Rice on the phone?

MR. HERRICK: Your Honor, John Herrick via telephone.

MR. BERNICK: Okay.

THE COURT: Thank you.

MR. BERNICK: Yes. And just so I was clear, Ms. Ramsey said that she represented five firms in connections with this?

MS. RAMSEY: That's correct. Kazan McClain, Waters & Kraus, Paul Hanley & Harley, the Wortnick firm and Early, Ludwick & Sweeney each were served with notices.

MR. BERNICK: Okay. So, you're not here on behalf of the Brayton Purcell people?

MS. RAMSEY: No.

MR. BERNICK: Is there anybody who is here on behalf of the Brayton Purcell people?

THE COURT: Anyone representing Brayton Purcell? There's no response, Mr. Bernick.

MR. BERNICK: Okay. Your Honor, would it be all right if I stood here. Actually, I would probably want to move

over here for a minute.

THE COURT: As long as you use a microphone.

(Microphone 2 is not functioning)

MR. BERNICK: Yes. Okay -- a microphone right here. It's on and it's 9:36. I wanted to cover if I could, the basic reasons that we're here. And we have the (inaudible).

Your Honor, there is -- these are all matters that are now the subject of actual court orders, and I'm not going to go through all of the history Your Honor's painfully aware of (inaudible) those court orders. I just want to highlight the basic core facts that give rise to the problems we're facing.

One is the shell game. And that was the word that we actually used in 1995. It is that we can't figure out where all the medical diagnoses and records are because there's one doctor that produces one thing, one law firm produces one thing.

Your Honor solved that problem, both in connection with the PIQ, and also in connection with the colloquy we had even last time with respect to the interrogatories on B reads by saying that there was an obligation to produce documents within the possession custody control of the claimant. And under Third Circuit law (inaudible), that means all of the prior doctors and this claimant's obligation to reach out to whatever lawyers or whatever sources of documents that

plaintiff has the legal right to obtain.

So, there's not going to be any issue. There are already prior court orders to deal with the obligations to search other sources.

Your Honor, also I took up the question of verification; both verification by the lawyer and verification by claimant, just so in connection with the orders that were issued and the PIQ, and again also with respect to the B read interrogatories that we went through last time.

There are then the privileged predicates, that is the privilege -- the predicates for asserting the consultants privilege. Those were specifically laid out in the B read production order that we went through on two different occasions.

And finally, and very significantly, there's a fundamental problem, one of the most pervasive problems that we're dealing with here, and it affects virtually all of the questionnaires, all of the data we've seen, and this is a matter, Your Honor, of tremendous importance because we went through this so specifically on the PIQ.

An employment history is not the same thing. It's answering questions about exposure to Grace products. The fact that we've got, essentially, an answer that goes to all of the different jobs that somebody has, doesn't tell us what they were actually exposed to, and it certainly doesn't answer a

question about exactly what Grace products they were exposed to. And this is a pervasive problem.

So, these are the problems. I'm not going to go through all of the history because the history is well established in the Court. It's too late. There are orders that says all of this information is needed, it's germane. The idea that somehow Grace is only working with the 2000 questionnaires is absolutely false. There were answers that were obtained on all of the questionnaires that we're relying upon. We are also searching all of the mesothelioma claim files for purposes of the conclusion of our expert work.

And even if they were only working with the 2000, the 2000 have all of these problems, and that's why we have to pursue them. Well, we went ahead, and with the benefit of those court orders, we served some discovery, and we told specifically -- the Court specifically -- what that discovery was. And we made an effort throughout this process to try to focus the discovery. So, we served 21 law firms with interrogatories regarding the predicates for the assertion of the consultant privilege.

There are 21 law firms with interrogatories regarding the clients. What did you do to come up with questionnaire, and we served deposition notices with respect to the same 22 firms. We had a meet and confer. I directly conducted the meet and confer, and I invited everybody who's sitting on that

side of the room to help us get to the point where we can reach an agreement.

There is only one suggestion that was made. It was a suggestion that was made, I believe, by Mr. Finch, to limit the number of depositions. There was no suggestion that was made in particular by the law firms, although I asked repeatedly. There was no suggestion made whatsoever for a limited subject matter or limited scope. It just didn't happen. I was on the phone. I made the request repeatedly. I made it after the call that I had on the meet and confer with other people. I quoted Your Honor's statements about how these excuse -- got to be more focused for Your Honor's benefit, and there was nothing by way of a substantive response to take.

Notwithstanding that, we made the effort to limit the number of depositions. We said that we would go for six different firms and three different topics. We made that undertaking unilaterally, and it's set out in our papers. Nobody responded. Not one firm came forward to say okay. There was no dialogue. There was no effort to compromise, and we are told, basically, we'll see you in court because we don't want to give any depositions. No depositions whatsoever, a position I'll add, Your Honor, that has not changed.

So, we come now to the evening for the hearing here today. And the six different firms that we focused on were the Early Ludwick firm, the Weitz & Luxenberg firm, Baron and Budd,

Motley Rice, Kelly and Ferraro, and the Angelos. So, those were the six firms that we specifically focused on.

Last night I called Ms. Ramsey. Actually, it was yesterday afternoon. I said you know, Early Ludwick has already been -- there's already been motion practice with respect to Early Ludwick, and I don't want to get involved in a question about whether we're now overlapping with what was already determined.

The fact of the matter is, that there are huge, huge problems with the information, including information that was told to the Court last time, on what exactly Early Ludwick has gone ahead and verified. There are all kinds of statements that were made. Remember, Your Honor, they have provided verified information on this, that and the other. The problem is, again, we're talking not about answers to the questionnaires, we're talking about the employment history. The overwhelming employment histories. Not exposure histories. And they're not even verifications. But, that is for another day.

I said we're going to make our record on that. We're going to proceed in a systematic fashion before the Court. So for purposes of today, we are holding that, and that is yet to come. With respect to Weitz & Luxenberg, Weitz & Luxenberg said in response to our interrogatories, give us more time. We're going to answer those interrogatories, so I took Weitz &

Luxenberg off the chart and I said we'll hold that in suspense, as well.

So, we come down to four different firms that we're talking about here today; Kelly and Ferraro, Motley Rice, Baron and Budd and the Angelos firm. And with respect to -- I'm now going to go through each one in terms of what they said on the privilege interrogatories, compliance interrogatories and depositions.

With respect to the Angelos firm, the Angelos firm did comply -- they actually -- affidavit of compliance with their -- establishing the predicates for the consultant's privileges. They have produced over 500 plus negative B reads that previously were being withheld. It would've been nice to know that before, but at least we have those now.

So, I provided a notice to Mr. Esserman that we would not be pursuing the deposition with respect to the predicates or the assertion of the consultants privileges. We weren't going to be doing that.

What did the Angelos firm do with respect to compliance -- the compliance interrogatory? What did you do to respond. They objected. What did they do with respect to the deposition? They objected. What about Baron and Budd? Baron and Budd, as a response to the privilege predicate interrogatories we're going to go through, with respect to the how to comply with the PIQ object deposition, object.

Motley Rice? We have not received yet. They said they served. We have not received. We called them up and asked for it. Their response on the privilege predicate interrogatories, we just don't have it yet. They've objected to the compliance interrogatories. They've objected to the deposition.

Kelly and Ferraro; no response to the privileges interrogatory. I believe it's an objection with response to the compliance interrogatory. An objection with respect to the deposition.

So, the track record that we're working with and the focus that we've maintained is on these four law firms is partly driven and indeed largely driven by the fact that while they have varying responses to the privilege interrogatories, they basically told us go away when it comes to actually being accountable. Actually being accountable for how they have conducted the filling in of these PIQs. They're basically saying forget about it. I was informed of an interrogatory, more informed of the deposition.

So, we now come to the question about whether that position is correct in what we're asking for here today. What we're asking for here today is that we're not moving with respect to the privileges interrogatories. We're not moving with respect to the compliance interrogatories. There will be another day for seeking relief on the basis of the answers that

have or have not been complied with.

We're not seeking contempt sanctions, although we believe we could seek contempt sanctions because Your Honor has so frequently ruled with respect to these matters and we've been back on so many occasions with respect to my clients.

We are considering that the need to move for an examiner in certain cases so that Your Honor doesn't have to deal with a bunch of discovery requests. And we can send somebody to work -- take a look at these interrogatory responses and the information that's been provided and basically do the work for the Court and for us so that we don't have discovery battles, but we have somebody that can get access to these documents in connection with the (inaudible) litigation.

There was a special master who was given access to the privileged documents that were issued there, and actually made rulings with respect to them with (inaudible) actually having looked at them. We can do the same kind of thing here. But, we're not asking for that today. We're not asking for Early Ludwick, Brayton Purcell, Weitz & Luxenberg. There are problems with Mr. Kazan's answers to the interrogatories. He continues to say I don't have to give you a client verification. He continues to say our firm is not withholding. Our firm is not aware. Does not actually say that they're producing materials so they don't -- they're not aware of them

with respect to custody of control.

There's only two firms that actually gave us a complete verification. They signed the compliance affidavit with respect to the consultant's privileges. It said you're not withholding them and we're not aware of any others that exist. No ifs, ands or buts. That's just it. And it wasn't Mr. Kazan and it wasn't Early Ludwick. It wasn't any of them. This -- Ms. Ramsey's clients. It was the Angelos firm who then produced hundreds of negative B reads, and it was a (inaudible). I believe Mr. Edward Moody did that.

So, we got a lot of other problems. Today, we're only here to ask for something that is very, very basic. We just want to conduct a deposition to find out why -- how the PIQs were answered, and to find out why the privilege is still being asserted with respect to B reads that don't meet the terms of Your Honor's order in terms of the predicates for the consultant's privileges.

Based upon that deposition, our experts will have more information and Your Honor will have more information to determine what kind of relief to offer up here. We can't be in a position where we're completely dependent upon each firm, can it decide for its own strategic reasons whether it wants to comply and answer the interrogatories, or come in at the last minute and say here's another proposal. We've got to get to the end of the process now.

The threshold question that's raised, again, focusing now on the deposition. The threshold question that's raised is, are these law firms correct when they have said and they repeat today, you just don't get a deposition at all. Are they right about that? And the answer is that they're clearly wrong under the law. The law is set forth in Part 3. The law doesn't say lawyers or law firms are immune to discovery. The law says that we take a look at particular circumstances, and where it's necessary, there can't be discovery if the discovery could be conducted in a way that protects any applicable privileges. That's what the law says.

It is a routine process, we know, and since the statement that's made of oh my goodness, they have no deposition and the lawyer or law firm is -- oh, it's so contentious and it's so terrible. There are depositions that are taken from in-house counsel and different law firms probably every day of the week to be turned in and meet discovery compliance to determine where the documents are located, to determine what efforts have been made to search for responsive documents. And we don't actually have to search for a bunch of decisions because this happened in this case. The law of this case. Even as -- as a result of ethic motion practice, that's the process Your Honor has ordered that depositions take place. Who are they? Well, Mr. Siegel was the subject of a deposition and he was deposed. Mr. Lieber was

deposed. Mr. Hughes was deposed. They're all lawyers who was relevant to an issue in the case.

And Mr. Siegel in particular was deposed on the particular question of the assertion of privilege. Your Honor ordered us to produce a revised law that would list all of the documents relating to the post-bankruptcy, post-petition reserves that were being withheld on grounds or privilege. And we did that law, and when Your Honor had questions about that law, they insisted upon taking the deposition of a person at Grace who was knowledgeable about those documents. It was Mr. Siegel and the former general counsel, and I just defended this deposition three weeks ago. We had all kinds of questions relating to matters, many of which were still privileged. That's the law in the case.

With respect to Anderson Memorial, we produced our local counsel in South Carolina in connection with the Anderson Memorial case, Mr. (inaudible) to answer questions on what documents were there. Again, that took place in this case.

So, we're in the situation called the (inaudible). In both cases there was a meeting. In both cases the depositions took place. In both cases, miracle of miracles, they actually ended up being fairly noncontroversial. So, the principle that says there's simply no ability to take the deposition is wrong on the law. It's wrong on the law of this case.

It is particularly wrong where essentially what they wanted to say is, we'll fill out -- we'll tell you the privilege and predicates that we want to, some yes, some no, but in terms of how we actually went about it, we're not going to tell you anything. We're not going to let you take a deposition. And now they say, with respect to the interrogatories, maybe now here this morning for the first time we learn there are some particular interrogatories that just in a certain way, I guess we can answer some of those interrogatories.

I'm sorry. The discovery rules are not so one-sided. We don't have a fox guarding the chicken house situation here. Discovery is conducted by a (inaudible) party. It is the Court that determines the (inaudible) scope of that discovery, not counsel on the negotiation basis coming in in a very nice tone saying, gee, Your Honor, otherwise it's going to be terrible, but we can live with this.

So, the remaining question then becomes here today, what about these four law firms? There are reason for discovery with respect to the law firms. It is noted to me that Fred Zarembe (phonetic) who is also a lawyer at Grace, also testified about the claims database, so we have all kinds of lawyers from Grace who have testified.

Is discovery justified with respect to these particular firms? And the answer to that is yes. And, Your

Honor, we have a series of exhibits here, and we're going to -- I'm just going to call out the numbers. We will furnish copies to the Court and copies to opposing counsel. They are all discovery responses or PIQ responses.

So, we have with respect to Baron and Budd. What about exposure compliance. Telling us what the exposures were versus employment history. This is how (inaudible). This is how the pages read, Your Honor. Grace exposure. Zip. They sent us a letter then, that says, "Please find enclosed the objections and responses." Claimant has specified in -- claimant's questionnaire responds that the documents from which the answer may be derived. Get this, due to the volume, these documents are not attached to the questionnaire, and will be made available for inspection or copying from the Dallas offices of Baron and Budd. That's how much we know absent going back to their offices and searching for the material. That's how well they get -- answered the questionnaire.

What about the interrogatories themselves? Well, they make a bunch of objections to the interrogatories. This is their response to the privilege interrogatories. They object to the definition of claimant's possession custody or control as being beyond the scope of those terms under 34A. Even though Your Honor has specifically and repeatedly ruled in accordance of the Third Circuit law that that is incorrect.

You then have objections to verification of

Interrogatories 4 and 5. They object to the verification as being beyond the scope of all 33, even though Your Honor has repeatedly said that she -- you do have the authority, you are ordering both the claimant and the lawyer to provide the verification.

Now, here's an interesting thing. I've taken -- and we can submit this to the Court -- I've taken -- they've basically answered the interrogatories with respect to the privileged predicates in kind of a spreadsheet form. A is the date of the B read that they're withholding. D and -- or C and E are the doctors or they filled in the letters for the doctors. And we're going to have to come back to that, but that's not the -- we're not raising that today. I is the date of the first diagnosis. And they say that the first diagnosis is the first positive B read. K is the date of the retention by Baron and Budd, and L is the retention by other firms, and N is whether they've looked for the document and found the document.

Well, on the basis of just what appears on the face of this, Your Honor, we have found a whole bunch of problems. First of all, we continue to find B reads that were actually done before they list the date of diagnosis and before the retention. And, Your Honor, the order completely and clearly and specifically said that privilege doesn't apply to things that happened before there was even a relationship or before

the first diagnosis. And we still have all the yellows -- are all situations in what LeBlanc and Waddell also done by the Baron and Budd firm that took literally untold hundreds if not thousands of pre-retention, pre-diagnosis B reads that are still being withheld.

We then have the date of the B read is the date of the retention, yet is actually the same as for before, the date of the retention of the law firm. Those are pink ones. We then have a situation where we actually have in some cases B reads which are done on the date of the diagnosis, but are still not being produced in the case.

We have missing documents, all kinds of missing documents that apparently no longer even (inaudible). And then we have unknowns where they don't know the date on which somebody else was retained. In case of the LeBlanc and Waddell, we can show Your Honor there's LeBlanc and Waddell, again the same firm, the same -- they're all covered by the same organization. These are all the dates in which LeBlanc and Waddell was retained. Unknown, unknown, unknown, unknown.

The retentions of the law firms; oral. The retentions of the B readers; oral. There's a massive, massive problem out here, and what they're saying is, they're not accountable for it, even though we know that there's a problem. I want to keep my time here, Your Honor.

With respect to Ness Motley, the next one. These are

the folks that shoot now, ask questions later. With respect to privilege, this is Mr. Herrick, (inaudible) on 91 of April the 13th. Mr. Herrick says, while we asserted the privilege, but that doesn't necessarily mean that there is privileged information in each case. So, we'll just assert the privilege even though we don't even know that it applies.

Well, on further review, had they told us that the privilege, in fact, does apply, we haven't even got to their response yet. And they want to let us know about how they complied with the PIQ note. They want a deposition, and I didn't hear any undertaking from anybody representing Motley Rice that they're permitted -- that they're prepared to do anything with respect to any interrogatories or any depositions.

What about what we have that Motley Rice on exposure -- this is Exhibit 4 -- again, what did they do? They provide the employment data, but when it comes to Grace exposure, it's blank. It's blank. It's just not fair. So, they give us all this employment history, but employment history is not the exposure history to Grace product. That, they just don't give us.

And again, they're not willing to give it to us. They're not willing to tell us anything about it. They're not willing to tell us how they filled out the PIQs. They just don't want to be accountable for that statement.

What about Kelly and Ferraro? Kelly and Ferraro hasn't responded. I believe that they objected to the compliance of --

MS. BAER: David? They've not responded to any.

MR. BERNICK: They didn't respond to anything. So, these are all -- he's now in a court today, and in terms of what they're doing here, they're not doing anything at all. They're basically saying forget about it. What about exposures? Here's a typical -- this is Exhibit 1. This is typical Kelly and Ferraro for exposures. It's an employment history. It's a whole series of places where they worked. It doesn't tell us anything about exposure. And these folks have tens of thousands of claims in this case.

What about the Angelos firm. Angelos firm is interesting. They did comply with the privilege predicates. They object to everything else. Why? Well, what do they do with this motion? This is Exhibit 2. This is an individual who says worked at Martin Marietta for a whole bunch of years, fills out all the codes. Well, what's the product ID? Zonolites -- everything that Grace made in this area is called Zonolite. That refers to a lot of things, not just asbestos. He says it's cement. So, it's Zonolite cement, yet Martin Marietta is some (inaudible).

And yet when you go to the files, it's clear that nobody actually read the file in filling that out because the

medical record for the same individual is redacted -- says he was exposed to asbestos '65 to '75 while doing home improvements. Home improvements. Nothing to do with Martin Marietta. He installed installation, drywall and shingles. These materials did contain asbestos.

So, when they filled out the form, they just again stuck in an employment date, said Grace, said cement -- or said Zonolite, said cement. They didn't read anything else. They didn't care about anything else. And we now know that this is true because, with respect to others, this is another individual where there's nothing. It simply says, "I work at your hospital. I worked with Zonolite," which is the trade name. What's the product? Product. There's nothing else.

It's just not right, Your Honor. It's not appropriate. It basically flaunts the Court's orders. Now, today we've heard a couple things. We've heard repeatedly from Mr. Finch that the -- you don't need this. Well, the Court's already ruled that we not only need it, we're entitled to it. So, that day is long gone.

We then hear from Ms. Ramsey and Mr. Esserman. They say well, you know, gee, we'd like to figure out some other way to get this done in a way that's less contentious, et cetera, et cetera, and I guess I have the following observations. First, there's still adhering to the principle of no deposition. And that's clearly contrary to law, generally, and

the law of this case. I guess I have the following observations.

First, they are so adherent to the principle of no deposition and that is clearly contrary to law, generally in law of this case. Number two, they are saying on interrogatories after its all too late, after this has already been done. We've been here for weeks. They now want to negotiate with us before the Court on which interrogatories they will answer. The answer is submit to the deposition, we'll ask the questions in the deposition. If you have the opportunity then if you want you tell us more about the interrogatories and we will move to compel on the interrogatories at some later date. But the deposition of fact if we're willing to negotiate on the interrogatories, they'll just help with respect to the deposition.

Then I come to the last point that I think is very critical here. In this whole area from the PIQs and everything that we're dealing with here, there has been nothing but objection in motion practice. We have gotten absolutely nothing on a truly cooperative basis. It is fight, fight, fight. They show up in Court. They are very nice people who are very polite and have good relationships with the Court, good relationships with counsel. We're not taking issue with that.

But they are standing before you as counsel for firms

whose actions rather than their words, whose actions define what kind of players we're dealing with here. These are people who are playing scorch bird tactics. We would never in a zillion years get away with the kind of obstructions they can place on your sentencing. And it continues. It is still going on. So we can't make this friendly with the firms are basically sitting on the information that only they have. We have got to come in, we have got to rely upon the order, Your Honor, to enforce the orders that are being made here. And it doesn't make any difference how nice counsel are unless they make noises now of let us negotiate with this. What they are basically doing is standing behind illegal principle. It is the wrong principle of this case and on to rely and we would ask Your Honor to enforce the deposition notices with respect to the four firms Baron & Budd, Motley Rice, Kelley & Ferraro and Angelos firm.

I will reserve the letter I have maybe two minutes.

THE COURT: All right. You may reserve your two minutes. But this is my time not your time. I have a question. I don't know what your experts are going to do with this information once you get it. How are your experts -- what use are your experts going to make of this information?

MR. BERNICK: My experts are going to make use of the information on the Shell Game. If it turns out that these law firms did not search for any other documentation and they are

presenting him their questionnaires or the attachments, only the materials that they want to present, say they got positive B readings. Then when they say well we got a positive B reading, the Grace's experts will now submit reports who have taken a look at the x-rays and let them out. What is the basis of them controlled studies and they find that the number of truly positive B readings under 1/0 in accordance with the written standards. There are written standards here.

When you follow the standards of positive B readings are seven percent versus the 80 or 90 percent they got from the claim files. We have a very easy answer when they come and say well that's just your experts. That's what they will say. No matter how blinding it is and how clear it is, they will say that's just your experts.

Our expert says X. Well if we know that they haven't made a search for any of the other data reads including B reads that they are withholding and were before the date of diagnosis, we have a very simple answer to Your Honor which is they are producing one positive B read but they are not producing all the other B reads that are likely negative. The whole key issue on B reads is replicability.

Our expert sent the x-rays out to two different readers. Matches have come to three. At least two or three have to agree to solve the problem of inter-reader variability. So we get all that. They haven't done it. They've only given

us one. In effect, they are improperly withholding the other. So we will say to Your Honor they can't argue that well although we just did it one way and they did it another, we did it the right way. They didn't do it the right way and they are not producing information that is relevant to show that the one they gave you was positive and the one that they are not giving you is negative. We already have cotemporaneous evidence from Ron (indiscernible) himself that this is a matter of practice.

They thought they could get away with just giving these out to a bunch of people producing the positive one and withholding the negative one. We want to be able to establish that they have withheld the negatives and they have done so in contrary to Your Honor's orders and they should be precluded from arguing that somehow their one B read would be satisfactory when they are not telling the Court the whole story. That's the thing with the Shell game we have -- with verification. We're going to go through all their files and establish that their files don't contain evidence of Grace's exposure.

So they are going to come back and say oh, well we have some other source for it. We believe it might have emerged here or here or here. But the client isn't saying that. Their client is not saying that. So the essence of the client verification means that the lawyer's arguments are not being established on the record and their clients won't verify

it. They are not being asked to verify it. We're going to ask to a negative inference in respect to that.

The absence of client verification is an essential element of (a) the summary compliance but (b) the credibility of the evidence. How is it evidence from the client when all it is is a lawyer's assertion. So the lawyer's assertion versus client verification essential to the admissibility of the very basic individual data that they are talking about, what about the privileged predicates?

Will Your Honor then issue an order that says the privilege only applies here, it doesn't apply there with respect to the B reads? We believe but we've just shown Your Honor that they don't satisfy the privilege predicate. So we should get reads and if B reads are not produced it's the same kind of argument we had before.

Lastly, this is huge Your Honor, huge. If they have not actually gone and determined exposure to Grace product or exposure to other companies' products and all they have verified is what is represented to Your Honor last time, verification and all that is verified is employment history then what we're going to say is that through the PIQs, you've seen the blank pages, that's the best they can do. It's not evidence of exposure. It's evidence only of employment. We want to pin that down. Because if they don't actually have evidence of exposure, I don't care whether you talk about lung

cancer, non-malignant disease or mesothelioma, if you don't have exposure to Grace product you are out of luck.

So that's another Shell game. Where is the actual exposure to Grace product data? We don't see it on the face of the questionnaire. We don't see it in the attachments. We want to know is there any place that exists or are you simply saying based upon employment we can make an argument. Remember Your Honor what those arguments look like. That's what Brighton Purcell, when Brighton Purcell talked about early light, ELS, Your Honor has seen this document.

MR. FINCH: Your Honor, I believe this is beyond response to the Court's question. I believe this is well beyond response to the Court's question and it's using up time that Mr. Bernick doesn't have.

THE COURT: Yes, I understand what arguments you intend to make. What is your expert going to do with this information? Is he going to modify his report? Is he going to incorporate this into his report?

MR. BERNICK: Absolutely incorporate it in the report. I thought I answered, Your Honor. I apologize if I am not being responsive to Your Honor's question.

Our experts are taking the population of the people with lung cancer and non-malignant who actually were the plain population of Grace and against Grace in the Chapter 11. They are basically asking two questions both under Daubert and the

law.

One is that the diagnostic data based upon the reliable methodology. And two is causation by Grace product based upon reliable scientific models and methods. Because if they can't meet the scientific standard with respect to either one they are out of luck. This is bankruptcy court, it's federal power applies, and the claim could not be presented in a Chapter 11 case based upon that evidence.

THE COURT: So your understanding is that all of this evidence you are now soliciting is going to go to the issue of reliability based on the information that is in the claim file but it's been submitted by the claimant based on the PIQs?

MR. BERNICK: That is -- the reliability in -- yes reliability under Daubert and also the state substantive law of causation. That is correct. So it's state substantive law of causation and that appears on both diagnosis and exposure and the reliability of the evidence as a requirement under the federal rules of evidence that apply in this courtroom.

So when Your Honor hasn't looked at it, when you take a look at our estimate, our estimate basically says with respect to this snapshot pending as of the time of the Chapter 11 which ones of those claims does it appear? You might be able to satisfy state law and federal law of evidence. With respect to those you may have the same quarry and we end up with a population of claim. At the end of the day it is a

population that we believe based upon information that's been provided might be able to satisfy state law and might be able to do so in conformance with the federal rules of evidence.

The whole thing is driven by it. So therefore it is a roundup what you have there. Then with respect to those as a snapshot we then project well if these are actually disease caused by Grace, this is not simply somebody who decides to make a claim, this is people who are actually sick and have some linkage to Grace, then you can use epidemiology not a science but epidemiology and project out the likely future flow of claims. So we now have the data so that epidemiological models that were kind of distorted -- I won't say anything else -- that were abused through the process of trying to develop these estimates of claim behavior, we now have the hard data to find out what actually is part of the population of people who got sick from asbestos. It's not predicate for any of your work.

THE COURT: All right. I understand --

MR. BERNICK: So when I go back to these questions what is our experts are doing, our non-estimation exerts go through and they apply -- they apply these particular filters or reviews. They reviewed the x-rays, they reviewed the B reads, they reviewed exposure histories looking for this kind of information.

There's a lot of information that's not there. It's

not been provided. Like B reads that are being withheld. Like the exposure histories not being documented either with respect to Grace products or non-Grace products. We want to eliminate any possibility that the other side will simply say well, you don't have it because (a) it's privileged and you can't have it and never would be able to have it, you don't have it because we just haven't looked hard enough. And/or it might be there someplace but hey this is estimations so you are never going to get it.

THE COURT: All right. I got it. I understand.

MR. FINCH: Your Honor, I disagree with almost everything he's just said but for one, let me just take one. On exposure for example, people work in construction, work in refinery. They know where they've worked. They don't necessarily know that they've been exposed to Grace asbestos but they have mesothelioma. They have a very good idea that they were exposed to asbestos to get the mesothelioma.

They filed a case against Grace and other defendants and the lawyers are able to, when they have to, prove exposure against Grace and the other defendants but the question it doesn't ask they to prove their entire case against Grace. What they are doing is they are taking the questionnaire responses and saying you had an obligation to give us anything that you would be able to obtain in discovery from Grace or anything else to prove up the case against Grace. That's just

not what the questionnaires ask for.

They didn't ask for, first of all (a) they haven't been able to do discovery against Grace for the past six years. They haven't been able to -- they haven't had any incentive to or any ability to tie a particular person to a Grace product at a particular place and time but they have historically been very good at doing that. And when there is no reason to suspect that they wouldn't be able to do that in the future. And if you look at the questionnaires and we've looked at all the medofemeoma questionnaires, it is a very high percentage of them that identify exposure to a Grace product and/or a Grace cite. But a lot of them don't and the reasons they don't is because they hadn't been able to do it for the past six years and have had no incentive to do it for the past six years.

THE COURT: Well, I mean, people can ask for discovery against the debtor. The ACC and the FCR who were going to decline the estimation could ask for discovery against the debtor.

MR. FINCH: But the individual claimants have not been able to pursue discovery against the debtor. It's only the individual claimants who know the specifics of their exposure and their work history. So the point Your Honor is that the whole debate about the questionnaires about what it means is for the experts and they can use their variant models.

But coming back to the dispute before us today on the

depositions, I didn't hear anything in Mr. Bernick's response about my position that he's already exceeded the 10 depositions allowed under the rules. The federal rules of civil procedure Rule 30A-2 or whatever it is that limits the number of depositions is the law. And he hasn't given any reason why that should be lifted or modified here. I think the proposal by the firms to respond to the questions about the processes that they followed given the information that he needs at a non-invasive, non-burdensome method, he hasn't responded to anything about that. I think that is the issue before the Court.

If they come back with preclusion orders or motions we have, you know, their entire methodology assumes that whatever is -- what is in the files and was able to be produced in discovery in response to the questionnaire which is basically a set of interrogatories is the same thing that would be able to be obtained if they could do discovery against Grace or do the types of things that you would do to work up a case for trial, which has not been done here. That's a very different thing and no court order has required people to do that.

THE COURT: Well the concern seems to be that, I don't know about a court order, but the concern seems to be that the debtor has served interrogatories in the past and is not getting any response. And as a result the interrogatories

don't seem to be particularly effective.

MR. FINCH: May I move to the chart here? There are two, I call them first set of interrogatories, second set of interrogatories and depositions. First set of interrogatories related to basically the privilege law on the B reads. That's not what we're talking about here. Second set of interrogatories relating to the compliance and the depositions go to the compliance with -- not so much compliance what processes did you use to respond to the questionnaires.

What I'm saying is in addition to the number of depositions the same information about how it is you responded to the questionnaires can be and has been asked in the compliance interrogatories which thus far have been objected to. But my understanding of the proposal I just heard from Mr. Ramsey -- excuse me, Mrs. Esserman and Ms. Ramsey and I believe the Motley Rice firm, although they didn't speak will be on board with this as well is they would answer information, interrogatories, designed to elicit that information in the second category. That as long as there is an order from the Court that says if the answers don't consist of a waiver of the attorney client privilege of the work product doctrine. And so therefore they would give them the information without the need for the depositions.

You know, in all of what he said he said nothing about the fact that he's exceeded the number of fact witness

depositions. I think the Court ought to set a limit on the fact depositions of 20 per side or 15 per side or something. He's already done 16 or 17. We've done eight. There's more reason to, you know, basically spend millions of dollars of estate money going around doing deposition after deposition after deposition on stuff on a case that ultimately boils down to experts and what the expert's opinions are.

Tom Florence's report said nothing about he needed this stuff. There is a deadline for rebuttal/supplemental reports of August 8. It is my understanding the Court entered this scheduling order, there's not going to be any more changes to it. We're not going to keep getting seriatim reports and requests to push this back. You know, one could describe ulterior motive here and all they wanted to do was set up more fights and ore delays and to try to push off the estimation hearing from January to, you know, some time in 2009.

In order to get to the trial in January, we've got to have the final version of the expert reports which we have I think. And we've got the final version of the rebuttal reports on August 8 which I think we have and I understand there is no room for modification of these dates because the time we have is very pressed. There's nothing Mr. Florence said in his report that says that he needs any of this and it is all just counsel arguing about why he wants to get this stuff. I think really what he wants to do is drive the plaintiff's lawyers

crazy and harass them and make them spend millions and millions of dollars.

They have spent tens of millions of dollars in lawyer time and paralegal time responding to questionnaires, dealing with this, showing up at these hearings. Your Honor, enough is enough.

MR. MULLADY: Thank you, Your Honor. On behalf of the FCR, although we are for all intents and purposes a bystander to the principle arguments here, I feel compelled to approach the Court and make a point about the process here.

I suppose I shouldn't be surprised in a case in which the debtor is presuming to exclude and disallow case before estimation that we would be having another looking through the looking glass moment in this case, but we are. That is because the procedure here is contrary to what the federal rules allow.

What has happened here by my observation is that a PIQ was propounded. Subsequent to that, interrogatories under Rule 33 and request for production of documents under Rule 34 were propounded by the debtor to these firms. Motions were filed to compel on the alleged inadequacy of those responses. Your Honor then ruled that the PIQ process could be supplemented by attachments.

So there was a motion to compel, there was a ruling by the Court and the response was to permit the review of attachments which the debtor of course engaged the Delaware

claims facility to do. Now we have instead of a renewed motion under Rule 37 which will be the proper procedure to compel or for sanctions against these firms for alleged non-compliance, what we have now is a notice of deposition to lawyers representing the firms to find out why they didn't provide adequate discovery responses.

This is not a procedure that is permitted by the federal rules and for good reason. If in any case in which a party was dissatisfied with discovery responses, one could note the deposition of opposing counsel to find out why the responses were inadequately provided. Well you can see where that would take us. It would not be to a productive or happy place. That is what undergirds a lot of the authority in the plaintiff's firm's briefs on why this type of discovery is disfavored.

Finally, Your Honor, I would note that we have the FCR, we've read the report of Mr. Florence. I heard Mr. Bernick talk about the so-called pervasive problem of employment history as he put it, not being the same as exposure history. Well Mr. Florence has already determined on the basis of his reliance on a non-estimators report that the only plaintiffs or claimants in this case that could claim that they have an asbestos related disease related to a Grace product are those who have indicated on their PIQ that they either personally mixed or handled Grace asbestos or worked with it

somehow.

He has excluded every other claim for purpose of his analysis that doesn't meet that criteria as a non-compensable claim and he's further taken that percentage of disallowed claims and projected it into the future. So why do we need more discovery now about whether there was or was not exposure to a Grace product? The analysis is done. He's excluded it. He's disallowed it. We believe impermissibly but he's disallowed it and he's projected it to disallow my client's claims in the future. We're going to have a lot to say about that on Daubert and on motions practice but the procedure here, Your Honor, is unnecessary. The discovery is unnecessary. The procedure is through the looking glass and should not be permitted. Thank you.

THE COURT: Miss Ramsey.

MS. RAMSEY: Your Honor, I have five points to make. The first is that we did not come here to negotiate with Grace. And the reason that we can't negotiate with Grace is Grace cannot give us the protection that we need if we are to be responsive to the questions that they've asked.

Hypothetically, if the question is you provided work histories but you didn't provide exposure data, why not? And the answer was, hypothetically, work history provides you with exposure because if a claimant worked at a certain location at a certain time and Grace product was present there, there is a

good faith basis to believe that person was exposed to Grace asbestos. That implicates for product privilege. It may implicate the attorney client privilege. We can't answer the interrogatories in the second set on the basis of the way that they are asked without this Court ordering that if we are prepared to answer them, if we do answer them, that we do not waive the privilege.

So the first point that I wanted to respond to is we're not trying to engage in a negotiation. We simply cannot answer the questions the way they are asked. To my knowledge, there have only been two sets of interrogatories that have been served on the law firms. With respect to the five firms that I represent, responses were provided to the first set. With respect to the second, they were not because of the way that the questions were phrased.

What we're proposing today is, and I've still not heard any additional information, factual information that the debtor has identified that we have not said and I don't represent all the firms. So I can't represent that the firms will do this. But what we are proposing is that if the firms do by two weeks from Friday respond to the four questions that I identified before which appear to give the debtor what it wants and the Court will enter an order providing that information does not waive the privileges, then there does not appear to be any reason to depose counsel.

The second point is that as Mr. Bernick went through his slides, it is pretty clear that these depositions are going to become argumentative very quickly because the question is why don't, you know, why don't you know this and how did you do this? And we're going to get into an ever expansive question about specific answers to interrogatories that are going to just be a side show.

The questionnaires, and this is the third point, were a snapshot in a point and time they were specifically, at least with respect to my firms, they were provided with a statement that said we haven't worked these up for trials. We're giving you what we have today but that's not everything that we would expect to have and it's not everything that we expect to have at the time that we are ever required to crimp up these claims.

What I'm hearing today and what's concerning me is it sounds as though the debtor was really asking that all of these cases be simultaneously worked up for a summary trial of some fashion and that is not what estimation is supposed to do. And it's not consistent with our legal rights.

The fourth point is that exposure in fact is often work history. The debtor may not like it, but for many trials if you worked at a particular location within a particular time frame then you are eligible for payment. With respect to settlements before bankruptcy, in many cases, if you worked at a particular place at a particular trade during a particular

time, that is sufficient for payment.

So to the extent that if Grace were to try these cases it would press for specific product identification then that is a burden that the claimants might have to address. But for purposes of the snapshot, for their to be a suggestion that somehow there is a hiding of the ball because exposure was not worked up at the time or exposure has not been focused on and therefore is not available at the time that the questionnaires were presented, is simply not correct.

And the fifth point, Your Honor, was that there were representations made about the compliance and of Early Ludwick and the Cozen firm and I am not going to address those today because they are not before the Court but I did not want to leave those statements stand without saying that at the appropriate time we will respond to any motions that are brought before the Court.

Thank you.

THE COURT: Mr. Esserman.

MR. ESSERMAN: Your Honor, just a couple of quick points. I think the line is way blurred on individual claims litigation versus estimation here. I think Grace has way crossed that line. I think they crossed it some time ago and they continue to try and go further and further violating that border.

Next is it was pointed out to me in the courtroom

today that they Exhibit 6 that Grace is using for today's hearing was a response to a questionnaire by the Baron & Budd firm for a client and this particular responses were supplement, something that Grace knows about if they had followed it through and were complete with lots of information and lots of data, attachments, references to the attachments, et cetera.

So I think part of the basis of what they are trying to pull here is by referring to questionnaires that before they were even supplement and we went through that whole supplementation process. Thank you.

MR. FINCH: Your Honor, I don't think Mr. Bernick has any more time and I would suggest --

THE COURT: He has two minutes, Mr. Finch. Two minutes, Mr. Bernick.

MR. BERNICK: Thank you. Mr. Finch says some have Grace, some not. What do we want the discovery for? We want to be able to pin down which ones. They are playing hide the ball. This is not a question -- this question is figuring out what the basic are so that the experts can do what they have to do. Mr. Malady says you've already excluded a bunch of people who are not or didn't directly work. The answer is on the basis of the few answers that we got we did but we want to know that we're going to be greeted by them not coming in on estimation and saying oh well here's some more evidence that we

didn't give you.

We have to pin that down and we still don't know what about other non-Grace exposures. If there was a fiber here and it's Grace and huge exposures that were not Grace, then our experts will say there is no Grace causation. One fiber theory doesn't work. They are playing hide the ball on this. They are hiding the ball for non-Grace exposure and they are hiding the ball on what they will say about Grace exposure when then the time comes at estimation. And they are hiding the ball from the ones who will be able to say to Grace exposure from the ones that were not Grace exposure.

Mr. Malady says there are no motions for sanctions and we should have moved for sanctions. I don't want to move for sanctions until we are very, very clear on the record. I don't know that I'll ever want to move for sanctions. There's not a reason for not allowing discovery that we haven't moved for sanctions.

Ms. Ramsey says well if a deposition takes place we may say why didn't you give us the exposure history. I don't know that that question will be asked. I think it is much more likely to be asked is there any evidence of exposure that you had beyond the fact of the employment? Did you go and look for that evidence or did you not look for that evidence so that we know what we can count on in the way of the factual predicates that our experts can use.

We don't want to have to guess on whether there is something beyond an employment history. We want to know whether there is something beyond an employment history. So it's not why, it's what. And there is no reason why this should be defined in advance of the deposition. Mr. Segal's deposition was taken at length without advanced rulings on whether particular questions would be appropriate or not. Ms. Ramsey says well I represent five firms and she makes a proposal. We haven't even moved today with respect to those five firms.

We may not move with respect to those five firms. So we get the situation of well a firm says you haven't moved so you can't do anything. But then the firms where we have not moved have said we are not proceeding, they come in and want to have the table worked out their way. We may or may not move. We want to do so with -- on the basis of a complete record.

Finally, the argument is made again and again, well there may be something more that these claimants would have found out if they had been able to pursue litigation against Grace. We'll be able to answer that. There was an enormous litigation against Grace. That's not the question though that we're trying to get at.

All we want to know is definitively what is it that you have against Grace and what is it that you don't have against Grace becuase you didn't look for it or you didn't

answer it so we don't have all these inferences and speculation on what the facts are with respect to this population of people. We've come very far in gathering a lot of the data but again and again and again the law firms to talk about money here is absurd in the case of these firms. They are going to have tens of millions, hundreds of millions of dollars coming out of this case, even more. They won't give us the basic answers to the basic questions so we know what it is that our experts can count on and they won't be cross examined on the basis of speculation, Your Honor. Thank you.

MR. FINCH: We would just like a ruling, Your Honor.

THE COURT: Okay, well with respect to the issue that the debtor is only moving as to four firms now, I think the problem is that the debtor has served the notices of deposition on 21 firms. I don't know whether the debtor has formerly withdrawn the rest or not.

MR. BERNICK: Yes, we have formerly withdrawn the request for all but the six, not to say that we won't make a request in the future but we are not pursuing that and with respect to the six we have taken two off that is Early Ludwick and Weitz and Lutzenberg. Early Ludwick because it's a more complicated case and Weitz and Lutzenberg because we have yet to receive their interrogatory answers. So the only notices that we were told constantly to make motions to go after particular firms so that is exactly what we did. We're only

pursuing the four.

THE COURT: Okay, but the trouble is whatever rulings I make, I mean this has to be -- there has to be an end to this at some point in time. And if the debtor intends to keep pursuing the deposition notices frankly I think the rulings that I make have to be binding so that we don't have to keep doing this over and over and over. There has to be an end at some point.

MR. BERNICK: I agree but Your Honor you recognize that I can only do what Your Honor suggest. We tried doing this all in advance. We tried to get Your Honor -- we did get Your Honor to rule on all this and all that happened was that they made the same objections before that Your Honor has already ruled upon.

So we served these, you know what the point is, it's difficult to get our arms around all of the firms at once without then getting different responses from the firms that are different than others.

THE COURT: All right. Mr. Esserman, which of these four firms are you representing?

MR. ESSERMAN: We represent Baron and Budd and the Angelos (phonetic) firm Your Honor. Of the four firms at the bottom of the chart.

THE COURT: Yes.

MR. ESSERMAN: We also represent Weitz & Luxenberg

should they be deposed later.

THE COURT: All right. And Ms. Ramsey, you are not representing any of the four today?

MS. RAMSEY: No, Your Honor. I just want to clarify for the record though two things or three things. The first is with respect to the initial offer to withdraw, I specifically asked for clarification about whether that was a withdrawal or whether that was an offer to withdraw and I was told by Grace counsel that they were prepared to withdraw or they were offering to withdraw.

With respect to Early Ludwick, last night when it was announced that they would not be pursuing that deposition today, they simultaneously indicated an intention to come back immediately or in the near term I think was the phrase, to the Court to seek a deposition. So the third point is I do agree with the Court that our interest is pretty significant in this because it's clear that these issues are going to be relitigated if there are additional notices served in the future.

MR. BERNICK: Just with respect to that, Your Honor, if I could. Early Ludwick, the reason that we took it off was that we just got more information on Early Ludwick and I didn't want to have an argument that was not based on the best record that we could. We can make arguments with respect to a bunch of other firms but again I followed the Court's instructions to

proceed with individual firms and I'm happy to have Ms. Ramsey's input today and she's given the input but I do not want to have Early Ludwick then be able to come back and say today was it. Because I didn't argue Early Ludwick. There's a lot of information in Early Ludwick that Your Honor should know.

MS. RAMSEY: And Your Honor we similarly, I want the record to reflect that we take the position that the Court has already ruled on a deposition of Early Ludwick and so we would also argue that at the appropriate time.

THE COURT: I intend to make rulings that are going to essentially set the tone by which I expect I will continue to make appropriate or similar rulings in similar circumstances. I have attempted, I'm not sure I've always succeeded, but I am attempting to keep the same rulings throughout the case when the circumstances are the same.

So whatever these rulings are unless there is a significantly different issue that pops up at some point in the future, these rulings will undoubtedly be the same unless somebody can show me why they should not apply to other circumstances. This law of the case will apply to other firms.

All right, who is representing Kelley & Ferraro? Do you -- you have not said anything, sir. Do you wish to be bound by anybody's argument? Do you want to make your own argument here?

MR. WILSON: Your Honor, we would --

THE COURT: I need -- I apologize but you have to use a microphone and enter your appearance, it is on the record.

MR. WILSON: For the record, Tom Wilson, Kelley & Ferraro claimants, Your Honor. At this point we would accept and bring in any of the arguments set forth by Ms. Ramsey, Mr. Esserman and Mr. Finch.

THE COURT: All right. Thank you.

MR. BERNICK: I'm sorry, can we know whether the Kelley & Ferraro firm has filed a 29 statement?

MR. WILSON: I believe we have, Your Honor. That would be my understanding. We do that normally in the normal course.

THE COURT: All right. If not, I think you are going to need to if that's the case. Okay, who is on the phone please for Motley Rice?

MR. HERRICK: Your Honor, it's John Herrick.

THE COURT: Mr. Herrick, is there anything you need to say on behalf of Motley Rice that has not already been stated by Ms. Ramsey, Mr. Finch, Mr. Malady or Mr. Esserman?

MR. HERRICK: Well, Your Honor, I would simply apologize to the Court for not being there personally. This case has been, as Mr. Finch has already mentioned, has taken a lot of money and time from my firm. Your Honor, Motley Rice is simply tired of being yolked up to the debtor's discovery cart

and whipped by their able counsel. So we would like to get this discovery finalized.

I know counsel thinks we're trying to hide the ball or whatever but Your Honor what we're trying to do is avoid spending all the time, effort and money needed to respond to Grace's voluminous requests.

I conferred with counsel including Mr. Esserman and Ms. Ramsey last night and I concur with what they have said and we would also rest on our papers. Thank you very much.

THE COURT: All right. Then as to the four firms that are involved, number one it appears to me that the appropriate way to begin this process is by a ruling from the Court that any responses will not waive the attorney client privilege or the work product for which that the responses will be available for use by any and all experts in this case in the Grace bankruptcy case and for no other purpose consistent with the other rulings that I've made in this proceeding.

I take it Mr. Bernick that will not cause any problem for the debtor and the use of the information that the debtor expects to make in this proceeding. Is that correct?

MR. BERNICK: That's correct. I think we've been very systematic about not displaying individual identifying information of any kind during the course of this process. Obviously the statistics that come out of this are then -- do become used. So --

THE COURT: The statistics shouldn't cause a problem for work product or attorney client information. So all right, so that is the ruling of the Court. Responses will not constitute a waiver of the attorney client privilege or the work product privilege to the extent that responses are provided.

Secondly, with respect to, and I'll call it Ms. Ramsey's proffer because she's the person who articulated it, it seems to me that by beginning with either and I at this point am not making rulings, I'm throwing this out for discussion. By starting a deposition or interrogatories, whichever, with the four areas that Ms. Ramsey has identified Mr. Bernick it seems to me that that is getting to the guts of what the debtor is attempting -- the information the debtor is attempting to get.

Frankly, I'm not totally convinced that this discovery is going to advance the ball forward but I have been also consistent in this proceeding in letting the debtor attempt to prove its case, its way. If the debtor wants to get this information we are very close to the end of this process and I'm going to let the debtor get this information. But it does seem to me that an effort to minimize the cost and the inconvenience and the hassle and whatever other negative words you want to put on this process ought to be advanced by the debtor. If it can be done by written interrogatory, I suggest

it should be done that way. If it can be done by limited depositions so that there is a time frame and limited questions that will not cause, I'll use the word fight, a fight and argument among the participants, then I think that is all right too.

But it seems to me that the four areas that Ms. Ramsey identified really are the four areas that the debtor is attempting to get to. Do you agree with that Mr. Bernick, that those are the four basic areas?

MR. BERNICK: I think that the articulations, I'm not sure that I remember well enough or have taken notes well enough to be able to sign off on the articulation. The questions basically have to do with what processes did you follow in filling out the questionnaire, what processes did you follow in determining which of the B reads were being withheld. And then what we have specified with respect to the questionnaires is very specifically exposure to Grace product and exposure to other product. Those are the areas that we want.

We sent those in our interrogatories. We continue to believe that they are appropriate. But Your Honor they were proffered by the other side only they just now which is fine. But being solely to answers to the interrogatories and the whole purpose for having depositions is to be able to explore those areas. If Your Honor -- what they are suggesting is that

we have to make do with how they provide the answers and then come back. That is a recipe much more than anything else for just what we have here today which is motion practice on the interrogatories.

THE COURT: Well here's the problem, Mr. Bernick, and that is I agree with the proposition that the individual claimants have not had discovery against Grace and their claims, the individual claimants claims, are not worked up for trial. And you know as trial lawyers sometimes you do have basic information about the -- about "exposure". You know you worked at a Grace facility or you know you worked at a facility where Grace product, as far as you know, was in place. But that doesn't mean that you have all of the information that you would have if you were proving your individual claim.

If what you are doing is asking lawyers what information they have in their files as of a particular date that's fine. But I don't think you are going to get a negative inference from this Court that indicates that that is the means all and end all without someone else having an opportunity t5o take a look at other information if the individual were proving a claim. That's not the purpose of this estimation proceeding.

So in that sense the discovery is not going to be relevant for the purpose that you are asking for it.

MR. BERNICK: Your Honor, to be very clear, I think Your Honor has, and again I'll take responsibility for this,

misapprehended what we've asked for very plainly and very simply. And what we've asked for very plainly and simply and it is only given the track record here going to come out if we are permitted to ask these questions and probe the subject matter is not counsel's speculation of what they might be able to obtain in the future. We're not asking for that, nor are we hiding our head in the sand that they are going to say well there's more that we would have been able to obtain with respect to Grace.

We will answer that question very directly and very specifically and establish that with respect to these law firms, this litigation has been ongoing for decades and they know huge amounts of information about everywhere that Grace's product was. They've got massive experience with the particular facilities as to which they say these people were employed.

So there's not going to be a situation. We've heard a lot of while we work it up for trial, we're going to answer that directly. But that has nothing to do with the discovery that we're conducting, nothing. What we want to know is what it is that they already have.

THE COURT: That's fine.

MR. BERNICK: If --

THE COURT: As long as the question is limited to what do you already have in your file, that's fine. That's

fine. That is an appropriate question. You may ask that question. What I am suggesting however is that the next step, i.e. that a negative inference can be drawn about the fact that there is nothing else out there may not be appropriate and if you are going to ask for it, you are going to have to give me some hard and fast law that allows me to make what I consider to be a giant leap from earth to the moon on that point.

MR. BERNICK: Your Honor, again you say that and I'll respond only because your -- the strength of your words suggests that it is some kind of an impossible task. We're not asking for that inference.

THE COURT: No, it's not impossible. Man has gone to the moon but you've got an uphill burden, Mr. Bernick.

MR. BERNICK: I would imagine it would run something like this. Let me get this distracted with it because it is now before the Court. It goes something like this.

They say that individual X worked at Y facility. They conducted great discovery of Grace with respect to that facility and they know what Grace product was there. They already know it because they've been litigating that facility for the better part of 10 years before the bankruptcy.

They know where this person worked in that facility. They know what job that person had at that facility. And at the time that the bankruptcy case was filed, they are completely versed in the environment that might or might not

include asbestos with respect to that individual. What if our proofs were that the litigation is precisely that mature because tens and hundreds of thousands of claims have been litigated?

But the fact that that point, that they can't produce any evidence is not even negative inference. It's just not there. The case is not there. And they can speculate, they might have been able to do better if they had more discovery.

THE COURT: And you can speculate that you might have been able to do worse had you had less discovery.

MR. BERNICK: But I don't have to speculate because at that point they had the discovery and we would say there is nothing further discovery is going to show. But -- the question of what might have happened in these cases could either (a) be speculative or (b) could be very concrete based upon litigation history.

The question of what the law firms and their clients know as of the time that the question is being answered, the question of what they know is a factual question. That goes to what the law firm knows, what the claimant knows including what the claimant knows through other folks as to whom their documents are in the possession, custody and control of the claimant.

Thus far, we've gotten limited information, we've gotten non-answers, we've gotten objections, we've gotten --

THE COURT: Okay, okay.

MR. BERNICK: Well I'm sorry, Your Honor, where I come from -- where I come from that is a dereliction of responsibility and most courts that I have been before like Your Honor issues orders and then stands by the orders and say you've got to comply and it's not up to you to determine whether you comply. You just comply.

So with respect to the areas that Ms. Ramsey has identified we do want to ask questions but we do not want to be hamstrung by having to deal with paper discovery alone. The time may come when we may move to compel and they move for sanctions. If Your Honor is laying out the beginnings of the groundwork for going forward here, the most important thing is to get the testimony of people who know the facts under oath without the prior restraint of you only get this or you only get this, just like they did with respect to the Grace people in repeatedly in this case --

THE COURT: Mr. Bernick, all right. You are arguing and I'm not sure about what. I asked a very simple question, I made a very simple statement, that's all. If you want rulings then we need to get passed this. The argument time is over and we're passed the hour and few minutes that I gave for this. Mr. Finch.

MR. FINCH: May I make a very concrete suggestion that would probably end a lot of this? My suggestion is that

they get back the answers to interrogatories that the firms have said they would respond to. And then if they want to come back and decide whether or not depositions are necessary. They then come back. But the Court said, excuse me Your Honor, a hard cap of 20 fact witness depositions per side.

If they want to use, they've taken 15 by my count. If they want to use four of their five remaining left to go to depose each firm that's fine. But the issue that my papers raised and Mr. Malady's papers raised was we don't want to be going around in repetition --

THE COURT: Yes, I am going to set a cap on the number of depositions on all sides, yes. The rules of civil procedure have already set them and to the extent they've been exceeded nobody has asked for authority to vary them. This case is not that unusual, it's just another case. There is no reason in this Court's view why massive numbers need to be taken. So yes, I think that is appropriate.

MR. FINCH: Thank you, Your Honor.

MR. BERNICK: Excuse me, this is now being selectively invoked with respect to this issue. All sides will exceed the 10 depositions in this case. We know that right now.

THE COURT: Yes.

MR. BERNICK: So if we want to have in connection with the omnibus proceeding in July a further cap the debtor

has no objection to proceeding in that fashion. The Court can make a determination in that respect. But now is not the time, post-fact of this issue to be using a cap now selectively to say that somehow we can't get what we're entitled to get.

THE COURT: Well I think the issue of starting with the interrogatories since it will take two weeks from Friday to get those questions answered is a good one. But what I am going to do is continue this request for the depositions until -- when is the next omnibus?

MS. BAER: July 23rd.

UNIDENTIFIED SPEAKER: July 23rd, Your Honor.

THE COURT: I'll give you -- I'm sorry. I'll give you a date in the meantime that is close to the date of the interrogatory time frame. If you will get through the interrogatories between then and July 23rd. Why don't you take a minute and see what you --

MR. BERNICK: If that is the proposal then I have -- I need to confer with my client. This is going to produce an enormous problem in this case particularly given the time constraints that were on. I have -- at this point I have to be concerned about my record because this is absolutely a critical feature of this case and Your Honor is now ruling with respect to all the firms that are not here, with respect to all kinds of --

THE COURT: No I'm ruling as to the four that you've

asked for. I'm not sure I'm going to permit beyond these four, Mr. Bernick. I mean, enough is enough.

MR. BERNICK: I haven't gotten anything by way of answers to any of these things.

THE COURT: I understand. And I'm going to order as to these four firms all of whom are represented here today and all of whom have said on this record that they will produce the responses to the interrogatories provided that the Court issued the non-waiver order which I had just issued on this order that they will produce full and complete responses. I will hold them to this. I expect full and complete responses. If you don't get it, I'm continuing this motion and then you will get your depositions.

MR. BERNICK: Then I at this point, Your Honor, again I don't mean to show any disrespect to the Court but I don't know what it is that we are going to get in two weeks. If the question was this imposes well what did you do to comply with the interrogatory answers, that is a classic open-ended question that the counsel for the respondent would ask.

THE COURT: I have a nice conference room Mr. Bernick and I suggest that at the end of this next motion when we set the schedule, you folks may go use it and you can work out the specific interrogatory questions. I'll be here so if there are any objections you can come in and get me. We'll go back on the record and I'll make rulings and by the end of the day

you'll have the interrogatories.

MR. BERNICK: Okay well then I would suggest then -- if I can ask what is Your Honor's schedule is today.

THE COURT: I am here.

MR. BERNICK: Okay, then what I would ask is that the Court direct the counsel and I guess Mr. Herrick is going to have to participate by phone to meet and confer with respect to the interrogatories that are going to be answered under oath that can be verified or not verified by the claimant.

THE COURT: Well the claimant, I mean if you are going to have verifications by the claimant, you are never going to get this done in two weeks. You wouldn't have verifications by the claimant if there were depositions. This isn't an interrogatory directed to the claimants; this is the deposition of counsel.

MR. BERNICK: I'm getting frustrated and I should stop. It is an interrogatory directed to the claimants. That is specifically what Your Honor authorized with respect to the privileged predicate interrogatory was that it was --

THE COURT: What I'm saying, pardon me Mr. Bernick, what I'm attempting to do is start the deposition process in lieu of the deposition with a written interrogatory in lieu of deposition to counsel, not to the claimants. So yes they will be answered under oath by the representative of the law firm that will be responding in lieu of the deposition. And to the

extent that the interrogatories are not fully and completely answered, I will permit the depositions.

So I will give you a date and I'll go find one. What I need to know from you is how much time after the responses come in you need to assess whether or not they are full and complete answers so that we can have a status conference. Because I understand that your rebuttal reports are due August 8 and July 23rd doesn't give you much time to try to schedule depositions. I will make myself available for a status conference to discuss this at whatever time you need after the responses come in so that it gives you as much time as possible to schedule depositions. I am ordering the law firms to have a witness available in the event that the debtor asks for it. The Court orders it.

So that will be the condition. So if the answers are not full and complete folks you will have to have a deponent available.

MR. ESSERMAN: That's fine, Your Honor.

THE COURT: So when -- I guess I'll give you a little bit of a recess so you can figure out what the interrogatories will be and how much time the debtor needs to assess them so that I can then give you a status conference date to address whether or not some further proceedings will be needed.

MR. FINCH: Your Honor, can we, before we recess for that purpose, can we take up the second matter which is the

schedule.

THE COURT: Oh, yes.

MR. FINCH: Which I think --

MR. BERNICK: I would actually prefer if we could take that after we had the opportunity to confer because this is now effecting the schedule.

THE COURT: I don't think it's going to effect the schedule. The issue as I understand the schedule is there are two. One is should fact discovery end at the same time as expert discovery. My answer to that is no. It should end sooner. So you folks pick a date while you are meeting and conferring because fact discovery should end sooner so that your experts have the opportunity to assess whatever facts they need in order to figure out what their reports need. So that is my answer to that one.

MR. BERNICK: I think a great disrespect -- again, I think it is very disrespectful. I can't hear because there is laughter and conversation over here.

THE COURT: All right. Gentlemen, hold it down. That's my answer. What was the second issue? There was a second issue.

MR. BERNICK: Well that issue Your Honor, if you are cutting off fact discovery, then that is also something we are going to have to deal with because there is substantial outstanding fact discovery and the question is, you know, when

is the cutoff going to be. So if the cutoff is going to be in time for us to do the discovery that we've already noticed and are proceeding with, we are going to have to push the date for the expert discovery back because the fact discovery is just not going to get done.

MR. FINCH: Your Honor, I would suggest that fact discovery cutoff of September 30th and an expert discovery cutoff of November 15th.

MR. BERNICK: Well I can't -- I'm not prepared to address that now. I have to consult with my client and find out what impact that will have because franklin this is the first time that there's been a -- the proposal that Mr. Finch made just now is different from the proposal that he made before.

THE COURT: Okay, well you are going to have a meet and confer. Why don't you take the opportunity to talk to you respective clients and see if that is acceptable. If it isn't then I'll give you a recess period. I'll tell you what time to come back to Court and we'll address the issue.

What was the second issue?

MR. FINCH: The second issue Your Honor was the question of -- Mr. Malady and I I thought had resolved the second issue except in one respect. It related to the timing of Daubert type stuff.

THE COURT: That's right.

MR. FINCH: The proposal was that we would have Daubert motions briefed such that the briefing was completed by December 21, 2007 and then any argument about the Daubert motions would be limited to lawyer arguments, 90 minutes per side, and it would not involve calling the witnesses to come for a separate Daubert hearing which is normally in a jury trial, you have a Rule 104 hearing and you bring the experts, you cross examine them. Give that this is a bench trial, we would limit it to lawyer argument of 90 minute per side. And the question of when that hearing would be held was left to your Court's discretion and preference.

It's my view that, you know, this hearing can be something that you could take up at the conclusion of hearing the expert testimony. You could take it up as we did in the other asbestos estimation cases as part of post trial. If Your Honor wants to do it at the first day of trial, I basically leave it to Your Honor.

I think in a bench trial it makes more sense kind of the way we did it in Federal Mogul. Hear all the expert testimony but cross et cetera, then have if there is a Daubert argument about that expert afterwards then you can just strike the testimony or limit it or whatever rather than having it you know taking a half a day or a day at the outset of the trial. But it's left to -- under my deal with Mr. Bernick it's left to Your Honor's preference as to when you would like to do that.

But the deal was that they would be fully briefed by December 22nd and any sort of arguments about Daubert for, you know, total would be 90 minutes per side and it doesn't involve having a separate evidentiary hearing with the experts.

Does that capture our agreement Mr. Bernick?

MR. BERNICK: No.

MR. FINCH: How does it differ from my email last night?

MR. BERNICK: Please Your Honor, if I can address the issue. The Daubert issue Your Honor previously indicated could be heard before the trial actually commenced beginning some time in January.

THE COURT: Could you put the microphone closer Mr. Bernick?

MR. BERNICK: I'm sorry. The Daubert proceeding Your Honor previously indicated should be held prior to the time that the trial takes place. In an effort to reach agreement with the other side regarding Daubert we agreed that we would not be calling any witnesses to testify in connection with the Daubert proceeding. Their expert reports and their expert depositions that will be available to the Court and can be furnished to the Court through a Daubert brief.

So we have no quarrel with the idea that we don't need to call witnesses prior to the trial. However, Daubert is a threshold issue. It is an issue that the Court could decide

later on but is an issue that must be timely raised before the trial. And Your Honor in all of my experience in Daubert proceedings and this is typically I believe the way it is handled, and the fact that it is a bench trial does not make a difference, the whole purpose of Daubert is to provide information to the Court that the Court can consider as the trial proceeds and make determinations.

Sometimes judges hear all the Daubert motions in advance, wait for a wtiness to take the stand and then make a determination before the witness takes the stand or even after an examination that certain testimony will come in or not. But it is critical to have the Court informed about the nature of the Daubert issues in this case.

This case involves very complex modeling issues. They are modeling issues that are extremely important from the debtor's point of view. We don't believe that they have been subjected to a meaningful Daubert scrutiny in this case. We know that that is true. We don't believe they have been subjected to a meaningful Daubert scrutiny in other cases. We have very important evidence to offer in that respect.

I would think that Your Honor would (a) want a brief on that before the trial occurs and (b) want to hear argument before the trial occurs. All that we want is to assure that there is the opportunity to have both the brief and the argument before the trial occurs so that Your Honor can

understand what our basic position is. I don't have a problem with having 90 minutes per side. I think that is probably more than adequate.

THE COURT: Okay. Well I think that is substantially the same. I guess the only question is the September 22nd date for filing the briefs.

MR. FINCH: No it's December 21st. It is substantially -- Your Honor, this is --

THE COURT: I'm sorry, I thought you said September 22nd.

MR. FINCH: December. That the issue would be fully briefed by December 21st such that you would file any Daubert motions on November 30 I think is the last day of November and then responses would be due on December 21st. So they would be fully briefed to the Court in advance of how the Court wants to proceed.

My proposal was if you left up to the Court as to when you would hear Daubert type arguments and Mr. Bernick wants to do it the first day or advance of the trial and in my view it is something that can be taken up either as post -- as part of the post trial closing argument or following the expert testimony after you have heard all the expert testimony.

THE COURT: Well I'm not opposed to having the motions and the briefs filed before trial. In fact I think I prefer that since the debtors -- I haven't seen, as you know,

Mr. Florence's report yet so I don't know what it is going to say. I'm certainly not familiar with the type of report that the equity committee's expert is going to file.

So it may be helpful in this instance particularly to have the motions and the briefs filed in advance of trial. I'm not opposed to having the arguments in advance of the trial either. Probably what you are going to get from me though is a deferral until after the witnesses testify as to rulings because I think I will want to find out in the whole context, the picture of the case, all of the rulings.

I don't understand that there are standing issues and that type of thing in this case as there are in others. But nonetheless to the extent that sometimes those issues are informed by what actually happens in the trial I probably will make rulings at the conclusion. But I think I would like to have the arguments in advance. I think in this case it would be helpful to do that.

So if -- I'm sorry, when is the trial actually going to start now?

MR. FINCH: It's supposed to start on January 14, 2008.

THE COURT: Are you opposed to doing the arguments in advanced?

MR. FINCH: No. I think the better practice is to do it later but I would propose that we start, maybe start the

hearing with the arguments. I don't know -- what I don't know, I haven't talked to my other clients. I don't know what my schedule is for those first two weeks of January whether I or Mr. Insulbach (phonetic) are available before January 14th. We cleared the dates that the Court sent around. We did not hold dates in the first two weeks of January and without being back in my office I don't know if I've got any dates those two weeks.

MR. BERNICK: We don't have a problem if we take the first day of the trial and devote the first part of the first day of the trial to Daubert arguments.

MR. FINCH: What I would suggest is the first 90 minutes -- you mean the 90 minutes per side to be Daubert and then the afternoon would be openings if the Court is inclined to hear openings, brief openings, limited.

MR. BERNICK: We're not here, I don't think Your Honor, today to talk about how the openings are going to take place or anything else.

MR. FINCH: Okay, fine.

MR. BERNICK: We're here to talk about the Daubert proceedings.

MR. FINCH: Okay, fine. I --

THE COURT: Well I have one other thing that may help if I can make a phone call and verify this with my staff which I'll have to do. Right now my Chapter 13 day is scheduled for

January 9. If I can push that to the 10th which is Thursday and you want to be heard the 7th, 8th and 9th, we could potentially do the Daubert motions and the openings on the 7th and then start the evidence on the 8th and I can also give you the 9th if you want two days of evidence that week.

MR. FINCH: The problem Your Honor is I don't know right now whether that works for Mr. Insulbach and myself. I won't be able to find that out until I don't know how long we're here, late today or tomorrow.

THE COURT: Okay. Well I don't want to make a change in my Chapter 13 calendar until I know because that's a lot of people who are involved in making that change. So I need to find out from you first, all of you, whether that is something that --

MR. FINCH: So the question is whether January 7th, 8th and 9th are available as dates to begin the hearing, effectively beginning the hearing with the Daubert argument and then start taking evidence the next day.

THE COURT: Right. I'm not opposed to starting on January 7th with the argument, let's put it that way. And I think I had plenty of dates built into this schedule. I asked Ms. Baer to add some extra dates so I'm not really sure you need the 9th anyway. I think we we've got plenty of dates added in this schedule so that this trial should get finished on time.

MR. FINCH: But I guess what I would like is if it turns out that either I or Mr. Insulbach aren't available on the 7th, 8th and 9th and something in my mind tells me I've got something else. I just can't -- my secretary keepS --

THE COURT: Well the 7th and 8th are already set for trial and I'm not changing those dates.

MR. FINCH: I thought -- no it's the 14th. No, it's not Your Honor.

THE COURT: Oh, oh, I'm sorry. I apologize.

MR. FINCH: No, it's the 14th.

THE COURT: Oh, I'm looking at the wrong week. Well you've already got the 14th, 15th and 16th.

MR. FINCH: Right.

THE COURT: Okay, that's fine.

MR. FINCH: So why don't we just start it with the 14th with the Daubert argument?

THE COURT: That's fine with me but I can't add an extra day that week.

MR. FINCH: I understand. It is what it is.

THE COURT: That's fine. If that's all right with you Mr. Bernick, we'll just do the arguments the morning of the 14th.

MR. BERNICK: That's fine.

THE COURT: All right.

MR. FINCH: The only remaining issue on the schedule

is the deadline for fact and expert discovery. The order that the Court has already signed there is an expert discovery deadline of October 31st, fact discovery deadline to be determined but in no event to exceed the expert discovery deadline. Given that the Daubert briefs are going to be due November the 30th, I think you have to have a expert discovery cutoff no later than November 15th so that you get the transcripts back from the last deposition so you can put it into your briefs.

Therefore, my proposal and suggestion is that you have an expert discovery cutoff of November 15 and a fact discovery cutoff of September 30th which is --

THE COURT: Well Mr. Bernick said he needed to check with some folks. So while you are doing your meet and confer I think he will have an opportunity to check and --

MR. BERNICK: Our greater concern though, Your Honor, frankly I don't think it is really necessary to have more time for the expert discovery. I think in fact the more that we adhere to the schedule that we have, the better chance we have of getting done with this thing.

I obviously take issue with the proposition that our experts must actually look at or directly rely upon a fact for that fact to be relevant to this estimation. There are all kinds of evidence that will be relevant to this estimation that will come in from fact witnesses and other people that the

experts may never see and the data they may never see. But it bears upon the predicates for their testimony.

I can have an expert make an assumption as Dr. Florence has made. He can make 15 assumptions and never have any contact with the evidence. And the evidence can come in long after his report is done and bear upon those different assumptions. That is exactly what we had intended to do. So the impact Your Honor of moving up the date for the fact discovery cutoff simply is just like what we heard in connection with the cap on depositions.

Grace as a party is facing multiple constituencies all of whom have the ability to call different witnesses and do different things. Grace is one debtor. We have taken a certain number of depositions of third parties, doctors and trusts. We're pursuing those and Your Honor knows about that and why that is taking place. We are pursuing discovery against the law firms, that is of critical importance to us because they have the core of the information that is available here.

We have experts. So to have either a deadline or a cap that is set as if Grace is just like any other party has the effect of biasing the this proceeding in terms of discovery against Grace. I know that is not Your Honor's intention but that is the effect if those caps are held to Grace without consideration of all the different factors.

THE COURT: I don't intend to set caps without consideration of whatever factors you want to give me but I do intend to set caps.

MR. BERNICK: We have no problem with that and with respect to the timing it is the same thing. We physically have to get the discovery done and all that I suggest, what we suggested before we came here was very simply, which is that we would get that fact discovery done by October 31st. Any part of that that we have to use in connection with an expert report would have to be done really sooner to have the experts be able to talk about it in connection with their depositions.

So the whole idea was to have the experts do their work, do the analysis even though there are certain facts that would be relevant to the assumptions that they've made and made explicitly that would continue on after their expert reports are done.

THE COURT: Well it's possible that perhaps your fact discovery can still end October 31st and your expert discovery can end November 15th. It doesn't seem, if your fact discovery is going to end that soon and your supplemental expert reports are due August 8th as it is, that you're going to have that much expert discovery.

MR. FINCH: Your Honor, if that is the proposal that the fact discovery end October 31st and the expert discovery end November 15th my client at least would live with that.

MR. BERNICK: This is the difficulty Your Honor is that if we have the expert discovery now extend to November 15th then we are going to have a whole series of other issues about the --

THE COURT: Well Mr. Bernick, you folks go talk about it. My ruling is very simple. Fact discovery is to end before the expert discovery so that all parties know what facts the experts will include. It can be a week before, it can be three days before, I don't care. You folks figure out a date but it has to be before. That's my ruling. You folks go figure it out.

MR. BERNICK: We'll work to pursue that and see if we can come to some agreement. I'm trying to craft the questions that will -- so we're prepared to sit down and talk about it right now.

THE COURT: All right. How much time would you like for a recess and I will be back to hear what your, hopefully, agreement is?

MR. BERNICK: I would -- I don't know what Your Honor's schedule is. I think we could benefit from having about 45 minutes to an hour. Then I think we'd be ready to see what we can report to the Court.

THE COURT: An hour, 45 minutes. Noon. I'll be back and noon and see where you've --

MR. BERNICK: It is all right if we -- I'm sorry,

Your Honor. Is it all right if we use this room?

THE COURT: Yes, absolutely and if you are done sooner, just come around the chambers and knock on the door and I'll come in. I'll be here.

MR. BERNICK: Thank you.

THE COURT: Thank you.

(Recess)

THE COURT: Mr. Bernick.

MR. BERNICK: Yes, I'm sorry to keep Your Honor waiting. We were trying to actually write something up that we could then distribute and that would be in somewhat legible form. Of course that foreclosed the possibility that I might be the actual scrivener for it. So it took us a little time to put together.

We have spent some time. I think we've reached an agreement with respect to the scheduling aspect of the case management process. Mr. Finch proposed that we have a fact discovery cutoff on the 31st of October and then an expert discovery cutoff on the 15th of November which would be two weeks later. That is satisfactory with the debtor at least.

I understand it is satisfactory to the committees although I don't know they are prepared to say?

UNIDENTIFIED SPEAKER: Yes, Your Honor. That's correct.

MR. BERNICK: All right. If that is satisfactory to

the Court.

THE COURT: That's fine.

MR. BERNICK: Okay. With respect to the, as you said, beginning the process, we've had written out here ten questions, some of them with sub-parts. We just got done literally writing them out. What I would propose is that if we could have a copy made, maybe a couple copies made, and then we could furnish the copies to counsel and perhaps to the Court at the same time so that everybody can review it at the same time and then just kind of walk through it.

I can't think of a better way to do it. I apologize for inartful language, incompleteness and the like. It was just what we could do in the period of time we had. But I think it gets us to the point where Your Honor can at least see what we have on the table.

THE COURT: All right. Have you talked to --

MR. BERNICK: No, I just literally just got back in so the idea is that they would look at it at the same time that Your Honor looked at it.

THE COURT: Okay, that's fine.

MR. BERNICK: I think that would just save time. So if I could ask --

THE COURT: With respect to the scheduling order, are you going to submit a revised order then so all parties will have notice including the parties who are not here?

MR. BERNICK: I think that would be appropriate, Your Honor.

THE COURT: Okay so that was I think Item 2 on today's agenda.

MS. BAER: It's actually Item 6, the first five of the motion.

THE COURT: Oh, okay. Thank you.

MR. BERNICK: Let me, while those copies are being made, in terms of process, if we got email answers to these interrogatories on the 13th of July. What day of the week is that, I'm sorry?

UNIDENTIFIED SPEAKER: Friday.

MR. BERNICK: That is Friday, Friday the 13th. I think we would be able to apprize the Court of our view about whether we need to go forward with the depositions. And I again won't make any prediction about that, really by the early part of next week. If we were talking about four firms and it's not going to take very long over the weekend to read the things, so it would be possible for us to report to the Court at the Court's convenience the following week.

I would also urge that, well, part of our proposal is going to entail bring up to the same point of completeness a couple of the other firms because by that time we should have received the responses from Weitz and Luxenburg and we will have had the time to review the additional materials on Brayton

Purcell and Early Ludwick. So we would also be able to bring to the Court's attention where we are with respect to those other firms.

What I'm struggling with Your Honor is that if we're trying to kind of have everybody working off the same page, there really are some different facts with respect to some of the firms and what I'm struggling with is how to get them on the same time table. I suppose if I can ask counsel when is the -- when is the Weitz and Luxenburg --

MS. BAER: July 2nd.

MR. BERNICK: July 2nd? So we could probably file by the end of the week of July 4th week which I guess would be the 7th?

MS. BAER: The 6th.

MR. BERNICK: The 6th. We could file any further motions that we have with respect to depositions of additional firms in order to have the record be complete so that Your Honor could determine based upon the interrogatory answers and also the additional matters that we bring before the Court, what to do about depositions if the depositions are going to go forward.

So I guess what I'm saying is if we got that piece of paper on file by the 6th and we got --

THE COURT: As to Urly and Weitz and Luxenburg?

MR. BERNICK: Yes. Urly, Weitz and Luxenburg. Urly

is very greatly linked to Brayton Purcell in terms of the underlying facts. We flagged Brayton Purcell before but they are still there. They are very closely tied together but yes, it would be those three firms that we would move on with respect to whatever record comes out of the answers to interrogatories that we get from Weitz and Luxenburg and the additional materials we have now received from Early Ludwick. We would file on those by Friday the 6th, perhaps the other side could respond the following Friday. Then we could have before Your Honor the next week, both the interrogatory answers that we've had here with respect to these four firms and also the record with respect to those additional three firms. So that at least could be before Your Honor all at the same time.

So that would be our proposal, at least our response to Your Honor's question about how quickly we could respond and maybe if I could mark, what is the next exhibit 9?

UNIDENTIFIED SPEAKER: Eleven.

MR. BERNICK: If I could mark, Your Honor, this is Exhibit 11.

THE COURT: I have one.

MR. BERNICK: Oh, you already have one -- the clerk and other counsel as well. I did the inter-lineations are just my own inter-lineations as I went back through the questions that we had written out. Ms. Baer was good enough to write them up as we developed them and then I reviewed them and the

additional markings are simply my own. They don't represent any input from other counsel.

MS. RAMSEY: Your Honor, before we begin to address the proposed interrogatories, with respect to the schedule articulated for Early Ludwick, Early Ludwick has already supplemented or provided to the debtor in accordance with the Court's orders and our offer made at the hearing I believe on May 21st, ninety percent or more of what is going to be provided to the debtor. There are a few claimants as to which Early Ludwick is still accumulating materials.

The 6th is a significant period of time between now and then in order to file any motions with respect to Early Ludwick and as a matter of my personal schedule it would be helpful if we could do that earlier. I will be away and out of the country in fact from the Friday, I think it's the 20th of July, until early August. To the extent that issues are going to be reargued that have been addressed before, it will be very difficult for someone else from my office to have the background in this that I had.

Simply reviewing the arguments of the hearing will not give them the factual background that I spent quite a bit of time obtaining. So I was also going to ask whether that hearing might be taken up in August. If so, then filing a motion on the 6th would be fine.

MR. BERNICK: I have no quarrel with taking up Early

Ludwick on a separate track. We then want it to become -- it would then become a separate track and probably also include Brayton Purcell and then I would want to make sure that the record with respect to that track in the rulings, while I know Your Honor is going to strive for consistency, there may be some differences. That record would not be before Your Honor in connection with this request for depositions. I'm happy to do that. We can get the work done and that's more convenient for Ms. Ramsey's schedule and I don't have any quarrel with that.

THE COURT: Are you representing Brayton Purcell too?

MS. RAMSEY: No Your Honor. In fact we disagree entirely that there's a linkage between Brayton Purcell and Early Ludwick other than the 19 claimants that Early Ludwick took in and referred to Brayton Purcell. I don't understand why those two are being treated together and as the Court is aware we've already had a substantial hearing and rulings in connection with discovery directed to Early Ludwick.

MR. BERNICK: Well but, I know that counsel is going to argue that somehow this was all resolved. That will be an issue that will be very much, I think, contested and Your Honor will take consideration of those arguments. We're not suggesting that Early Ludwick is responsible for Brayton Purcell. They are separate firms. I believe they are represented by Mr. Esserman.

MR. ESSERMAN: I've represented them in other cases but I don't think we've ever represented in Grace, have we?

MR. BERNICK: So be that as it may if they are going to have other counsel here that's fine.

MR. ESSERMAN: Maybe I just don't know.

MR. BERNICK: But whatever it is, we don't have a problem in putting both of those firms on a different track because of the different record and I think that will make it possible for Ms. Ramsey to enjoy her time off. We will then file with respect to Brayton Purcell and Early Ludwick, we'll make an effort to do that also by the 6th of July but it might slip a little bit. It sounds to me like if it does that's not a problem for counsel for Early Ludwick in any event. I don't know if that answers Natalie's question but that's where we are on that.

MS. RAMSEY: Yes, Your Honor, I believe that addresses my concern. Thank you.

MR. BERNICK: Would Your Honor want to take a short recess to review this? I think --

THE COURT: All right. I think it may be a good idea if I do. That way if you folks have some issues that you want to discuss that may make more sense. So I'll be -- we'll be recessed for 15 minutes. That should be enough time. All right.

(Recess)

THE COURT: Mr. Esserman.

MR. ESSERMAN: Sandy Esserman. Let me take a crack at this. We got this at the same time as Your Honor did. But let me make a suggestion as to how we should proceed. Because it's hard -- I think there probably is some cleanup in here.

What I'm going to suggest is this, Grace go back and serve us with their interrogatories, these interrogatories. There's going to be some cleanup I think. They said doctor, they meant B reader, other things. But they clean them up, they serve them on us. We need to be absolutely certain that, and I think that the record is clear, that there is no waiver of attorney client or work product privilege by answering interrogatories.

We will then email the answers to these interrogatories on the 13th, which is the date. And to the extent that, or sooner if they are available, and to the extent that the answers are insufficient or Grace doesn't like them or, well Grace may not like them but if Grace thinks there is a problem, we can come back here at a date and they can either move for the depositions or address these things. We think we can get the information that is -- that they are requesting and need and deserve by the 13th. And they should be -- they should go ahead and get these served on us. Then we'll just respond on the 13th.

MR. BERNICK: If I can ask Your Honor. I think we

have one other matter to raise actually in connection with these. But that's fine. We can come back to it. I didn't hear the statement though that we weren't going to get either objections or proposed changes to the scope of what is being asked. If Mr. Esserman is saying that the four firms will in fact answer these questions, then I guess that's what Your Honor directed that we do here today and I understand that. I didn't hear that in the statement of Mr. Esserman.

MR. ESSERMAN: This is a discovery. You are going to serve it on us. There is a motion to take all these depositions which is still pending and still before the Court. We have requested as an alternative that we provide information in interrogatory form. These are your interrogatories, these aren't our interrogatories. We will give you what we consider to be substantive responses. And if you think depositions and the Court thinks depositions are still required or needed, you are free to have that hearing and move. We know that is an issue. We intend to respond to these interrogatories and give you substantive answers.

I don't know what else to say other than we obviously need to be protected on a waiver. But if there is a problem or you perceive that there is a problem or you don't like the answers or you think you got nothing but nine objections in answer, well we'll be back here in a few weeks and you are going to be seeking depositions and the Court may be receptive

to that, with that type of response.

THE COURT: Well I have already ruled that the responses will not constitute a waiver of the attorney client privilege or of the work product privilege. So I do not expect to see objections on those basis because I have already preserved that for your clients.

MS. RAMSEY: Your Honor, except that to the extent that was offered it related to four topics and these may require information beyond those four topics. There are some firms that have not been consulted and, again, because whatever rulings the Court makes today may have implications beyond today, I just wanted to make sure that the law firms are not backing away from the prior offer. But the offer to provide information that invaded the work product privilege and the attorney client privilege was as to the four areas we identified.

THE COURT: Okay.

MR. BERNICK: Well I'm prepared -- I was going to say Grace first of all it's not just me. Grace is prepared to acknowledge and adhere to the determination that Your Honor made with regard to non-waiver with respect to all of the questions that had been put here in this. I took Your Honor's remarks, I think Your Honor is basically saying that right now so we don't have to deal with that down the road.

THE COURT: Yes, I don't know whether the firms are

in a position on behalf of their clients to make an offer of that waiver right now. To the extent that the firms are prepared to answer these questions provided that the Court enters an order that says your attorney client privileges and your work product privileges are preserved and not waived by answering these questions in whatever format they are eventually transmitted by the debtor to your firms, to the firms that you represent. I am so ordering.

So those answers will be protected. The questions in whatever format and in whatever format the answers come to those questions will not constitute a waiver of either the attorney client or the work product privilege. The debtor has so agreed, correct Mr. Bernick?

MR. BERNICK: Correct.

THE COURT: Anybody on behalf of the plan proponents, plan supporters, disagree with that prospect?

MR. BENTLEY: No, Your Honor.

MR. PASQUALE: No, Your Honor.

THE COURT: All right. So everyone is in agreement and the Court is so ordering. How about the committees and the ACC and the FCR, any disagreement?

MR. FINCH: No, Your Honor.

MR. MULLADY: No.

THE COURT: Okay. So your clients are protected to the maximum extent that this Court can offer that protection.

Your clients are protected and whatever form of order you wish me to sign, you may prepare and I will sign. If you want it simply added to the interrogatories, this part of the court order, then I'll have Mr. Bernick add a statement to that effect on the interrogatories. However you want to work it out is fine with me.

MR. FINCH: Your Honor, I think people would like an order that say responses to interrogatories shall not constitute a waiver of the attorney client privilege and the work product doctrine.

THE COURT: Fine.

MR. FINCH: And I would ask that the interrogatories be served out by close of business tomorrow if that is doable.

MR. BERNICK: Well wait a minute. I didn't understand that the Court was finished. I raised a question which is what these are going to be answered and I heard again from Mr. Esserman a very careful statement that was not a commitment that these questions would be answered. Rather that they believe that they will provide the information they believe (a) we need and (b) we're entitled to. And we have to wait to see what that is.

We have put down on paper exactly what it is that Your Honor's order required on December 22nd with respect to B reads and what exactly, we actually crafted this by looking at the questionnaire and basically saying did you answer the

questionnaire. If we are now going to go through yet another round -- we were here on the 8th of May. Actually I think this was raised originally in the 13th of April, so we are now almost 90 days into this process.

I think Your Honor what I would propose and I don't mean to impose on Your Honor, you've now got them. Why don't we just ask the Court determine which ones of these things are now appropriate. This whole thing has been completed briefed. If there are things there that are not appropriate or that Your Honor wants us to explain what we did and why we did it, I'm happy to do it.

What I think is completely contrary to the history here is to now let the law firms come around with yet another round of why it is that they don't want to answer this or they don't want to answer that. As Mr. Speights (phonetic) said to me in connection with Anderson Memorial, as was said to me in connection with Mr. Segal's deposition, all we want is the deposition. It's not going to last very long. What's the big deal?

THE COURT: Well let me interrupt Mr. Bernick because here's the problem that I see. The firms that have to provide the answers haven't seen these questions yet. So I understand in the position of counsel to those firms Mr. Esserman, Ms. Ramsey, other counsel who are here may make a good faith assertion that answers, substantive answers will be provided.

But their clients are the ones who have to do the answers.

If you can, in fact, make service on the firms or I guess the attorneys will accept service for their client, is that correct?

MR. ESSERMAN: Yes, Your Honor.

THE COURT: Okay, tomorrow. I am going to be in the Virgin Islands Thursday and Friday. I can set up a time on Friday in the event that the firms have any objections to answer these questions, to rule on any objections, they'll have to be orally done but I can give you time Friday to rule on objections.

That way it seems to me you will have the answers to any objections that the Court can rule on and from then on it should be a matter of issuing substantive answers thereafter. Then if the answers are not complete we'll have the issue as to whether the depositions can take place but at least then you'll have the parameters for rulings but I'm a little hesitant to state answers to rulings or to objections that haven't been voiced when the firms haven't even seen the questions.

MR. BERNICK: That's not a problem. We will get these served by tomorrow midday and we may even be able to get them served this afternoon. So we'll be prepared to proceed in that fashion.

MR. ESSERMAN: And please make sure you serve Mr. Hooker because I'm not going to be in my also. Please serve

both of us.

THE COURT: He can't hear you Mr. Esserman.

MR. ESSERMAN: I'm sorry. Serve not only me but Mr. Hooker because I'm not going to be in the office.

MR. BERNICK: Sure, we'll serve Mr. Herrick. Is it Herrick?

MR. ESSERMAN: Mr. Herrick hasn't even seen these questions.

THE COURT: That's what I mean.

MR. ESSERMAN: And none of my clients have seen it. So you know they have to be distributed and that's why I answered the questions the way I answered them.

THE COURT: All right. This is the process that I think is appropriate. The debtor is to serve the interrogatories not later than let's say 2:00 p.m. eastern time tomorrow. That should give the lawyers until 2:00 p.m. the following day, the 28th, to discuss the matter with the firms that they represent.

If there are objections that are going to be lodged to any of these questions, you are to contact who on behalf of the debtor? Who do you want contacted if there are going to be objections because I want a meet and confer on Thursday afternoon?

MR. BERNICK: They can -- if it's any time other than three to five on Thursday afternoon, they can contact me. My

cell phone is 312-927-6420.

THE COURT: Wait you are going to have to repeat that but wait a second, you said any time other than three to five?

MR. BERNICK: Other than three to five. I have a client meeting in another city. Otherwise I will make myself available. It's 312-927-6240. I think actually all the folks here probably already have it except the gentleman from Kelley & Ferraro.

THE COURT: All right, so 6:00 p.m. eastern time for a meet and confer tomorrow with Mr. Bernick in the event there are any objections.

MR. BERNICK: And then can we also have --

THE COURT: Thursday, I said tomorrow, I apologize. Thursday, June 28th, Thursday. All right. Now I need to get a time.

MR. ESSERMAN: Also one other thing, Your Honor, just to clarify. We are going to answer these. Our firm intends to answer these but they are going to be answered subject to your Court's order and any other objection they may have. They are going to provide answers but the answers are subject to the objections.

THE COURT: That's fine. Yes, answers subject to objections are fine. The issue is substantive objections and I do expect answers since I am --

MR. ESSERMAN: I understand, Your Honor.

THE COURT: Okay. But if there are objections that are going to prevent answers, that is why I am expecting the meet and confer to be about at 6:00 p.m. eastern time with Mr. Bernick on Thursday, June 28th. Then if there are going to be those objections and you folks cannot agree, then I will hear whatever those objections are on Friday, June 29th. I think the same time probably is to say 11:00 a.m. eastern time. Is that acceptable? And we'll have to do it through court call. The Virgin Islands does have access to court call.

So I will have Ms. Baker notify court call that that is the method that we will use. In the event that there are no such objections then I will expect Mr. Bernick that someone from the debtor will contact my Pittsburgh staff and let them know that first thing on Friday morning so that I don't need to be available for that hearing at 11:00.

MS. RAMSEY: Your Honor, Natalie Ramsey. I don't believe that we will have input into this. To the extent that we will participate I just wanted to advise the Court I will be on a flight at that time but my partner, Leonard Buzby can be available to participate if necessary.

THE COURT: All right.

MR. BERNICK: Your Honor, I guess two other small things that relate to -- actually one is not so small. We have not -- we have tracked -- I think we've tracked down Kelley & Ferraro firm originally filed a 2019 statement. But Your Honor

then I believe gave some guidance as to what would be required by way of a 2019 statement that was not actually met by the Kelley & Ferraro statement. I don't believe that any supplemental or new statement has been made. So if we can get Kelley & Ferraro to submit a 2019 statement, I just want to make sure that if they represent that they actually are appearing for counsel for claimants in the case that that be formally done pursuant to 2019.

THE COURT: Okay, yes I think, don't I have an order outstanding that indicates --

MR. BERNICK: There is. I just don't know that there's been compliance with it.

THE COURT: All right. Well they are going to have to be in compliance with the 2019 statement with the order if they are not.

MR. WILSON: Again Your Honor, Tom Wilson for Kelley & Ferraro. I understand that we did file a 2019 originally. It is my understanding that we did file the supplement and once the Court made those -- because we supplemented a number of them all at once. And I spoke with my staff during our last break to make certain that and they were double checking that. It was their understanding also that we had filed it.

If Mr. Bernick thinks that we have not filed the supplement, then I will go back and recheck it and make certain that it was filed. But it is our standard practice.

THE COURT: Okay.

MR. BERNICK: Then the last thing Your Honor is that we are sitting here with the Baron and Budd at least give us the logs. We have problems with the logs but they gave us the logs of the B reads that are being withheld pursuant to our privilege interrogatories, as interrogatories focused on the predicates for the consulting privilege.

Angelo's firm actually submitted an affidavit of compliance and gave us a number of B reads. We understand that there was a response from Motley Rice. We haven't seen it. We do not understand that there has been any response by Kelley & Ferraro. And to the extent that the deposition was designed to focus both on the compliance matters with the PIQ and on the consultant privilege issues. That was, topic one was consultant privilege issues, it's pretty material to the issues that are going to be before the Court when we see everybody's interrogatory answers whether we've gotten interrogatory answers for the privilege interrogatories for Motley Rice and Kelley & Ferraro.

So those answers were actually due, what was it the 18th, and I don't know, we haven't seen either one. Could Your Honor, I don't know, I guess direct them to answer the interrogatories.

THE COURT: I'm sorry, are you saying Motley Rice you think is in --

MR. BERNICK: They said that they served the answers but we haven't -- they were served by mail they say. We don't know whether there are any answers or whether there are objections. So I guess what I would ask is that we don't -- we can deal with their submitting them late but we'd like to get the responses from those two firms submitted to us by email by let's say the 2nd, which is a Monday, so we can at least have that in the mix.

The other firms have at least responded but we don't have anything from those firms, two firms right now.

THE COURT: Mr. Wilson.

MR. WILSON: Again, on behalf of Kelley & Ferraro we will have them by the end of business day on the 2nd via email.

THE COURT: Email, okay. Thank you. Mr. Herrick, are you still on for Motley Rice? Anybody on for Motley Rice?

MR. BERNICK: We can undertake to contact and make sure. They say that they've served the responses so if that is so then it won't be an issue. If it is an issue, we can raise it maybe with Your Honor and let them know about the potential conference on Friday.

THE COURT: All right. Yes, I think that would be a good idea. Please contact Motley Rice and tell them that I expect the responses by July 2nd by email. If you have not received them by mail in the meantime and time is getting kind of short to do that. All right. What have I lost in this mix

somewhere?

MR. BERNICK: Well we've made a noble effort Your Honor to adhere to the time limits but I think that we've still got a ways to go on that. But there was an effort to adhere to the time limits today.

THE COURT: All right. I think the one thing I have lost, you said that by the 13th you would be getting the responses, you would know whether some time in the next week you need some additional discussion concerning depositions but frankly that probably pushes it to the next omnibus which is the 23rd.

MR. BERNICK: Yes, we are scheduled to be here on the 19th of July.

MS. BAER: At 2:00.

MR. BERNICK: So we could take this up. Your Honor is going to be completely conversant with everything by that time. In other words what we're proposing is that the interrogatories which will be gone through for objections in advance would then be answered by email by July 13. We would be then prepared to address with the Court our continued -- what I take to be a continuing but not ruled upon, continued motion for the depositions. We would reset that for the 19th in the afternoon in the event that there continues to be issues with the responses.

MR. ESSERMAN: Your Honor, this is Sandy Esserman.

I'm involved in that hearing on the 19th. What I'm going to suggest is that we keep it on the Grace omnibus on the 23rd. That's only four days later. We've moved the R&Q. I understand we're not going to move the R&Q hearing but I want to make sure that we get, you know, we have had that scheduled for several hours for a long time and I think it would be unfair to have that heard then. Frankly it belongs on the omnibus hearing on the 23rd. We're talking about a couple of days.

MR. BERNICK: I don't have a problem with that Your Honor. Your Honor has enjoined us to be cautious about scheduling too many things for the omnibus. Exclusivity is up. You've told us that exclusivity is not going to take a long time. I don't have a problem in moving it to the 23rd.

We then would want to make sure that the depositions, if they go forward, go forward very promptly thereafter because the monkey really is on our back at that point in time. But if that is more convenient for counsel, I don't have a problem with doing it on the 23rd. We're prepared to proceed on the 19th but I don't have a problem.

THE COURT: The other option is my calendar on the 24th in Delaware at the moment is not particularly full. So it's getting kind of late to have a lot of things on. I don't know the specific time at the moment. I know that has you staying over another day though. But I could also hear this on

the 24th if that is better at ten, ten to twelve.

MR. BERNICK: Let's schedule it if we could for the 23rd with the proviso, again, with the Court's -- with the Court's convenience, let's just do that for the 23rd and if it has a spillover all counsel are on notice that it may have to spillover. It may be that some people want to participate by phone. Other people want to be there. But I really think that at that point I'd rather go back to the 19th because I think we can get it done then too.

THE COURT: Okay. Well frankly my preference would be to either do it on the 19th or 23rd too just so that we're not pushing up against the deposition dates. But the 23rd is fine. This motion is continued then until the July 23rd omnibus.

MR. FINCH: May I suggest time limits on the continued argument on the 23rd then?

THE COURT: Yes, I think the issue that I will be addressing is whether or not the answers to interrogatories are full and complete and why in the debtor's view they are not and why in the view of the entities that have answered they are.

MR. FINCH: I think 20 minutes per side is sufficient.

THE COURT: Yes, 20 minutes. Twenty minutes worked very well this time. Well 40 and 30 but 20 minutes.

MR. FINCH: I think since this is a continuation, I

think 20 minutes per side would be fine.

THE COURT: That's fine. Twenty minutes per side is fine. But we are going to start with the exclusivity motions though.

MR. BERNICK: Just so we don't lose it, remember and I'm sure the Court will remember, I indicated that we were going to pick up these three other firms also. And we would be prepared, what did I say also on the 13th to talk about the other -- to file something on the other firms. Early Ludwick has now been deferred, Brayton Purcell, so that leaves Weitz and Luxenburg. We're going to also want to take up on the, I guess, it would be on the 23rd. Right now Weitz & Luxenberg isn't on the table because they haven't given us the interrogatory answers.

They are going to do that. If we have a problem with the interrogatory answers or we don't, we will then be wanting to make the same motion as to them.

THE COURT: That's fine.

MR. ESSERMAN: What -- I apologize. I was wondering what time are we talking about for the 23rd?

THE COURT: The omnibus starts at two.

MR. BERNICK: Would that be okay for --

THE COURT: That's fine. All remaining deposition notice issues but the debtor will have to get that one scheduled I guess because that one is not actually being

continued I guess.

MR. BERNICK: Correct.

THE COURT: Okay. Now what else have I forgotten?

MR. BERNICK: I don't think you've forgotten anything.

MR. ESSERMAN: I think lunch, Your Honor.

THE COURT: Okay, any other matters then to be addressed today? Is somebody going to give me a new scheduling order? I did forget that.

MR. BERNICK: Yes.

THE COURT: All right. Thank you.

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C E R T I F I C A T I O N

We, KATHLEEN BETZ and LYNN SCHMITZ, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Kathleen Betz DATE: June 29, 2007

KATHLEEN BETZ

/s/ Lynn Schmitz

LYNN SCHMITZ

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